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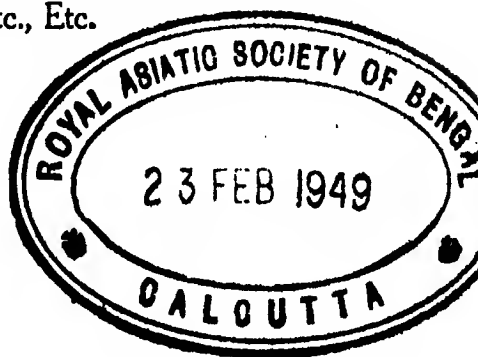
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BY

KUMUD NATH BHAUMIK, B.L.

Author of *The Patni and Revenue Sale Laws*, *The Indian
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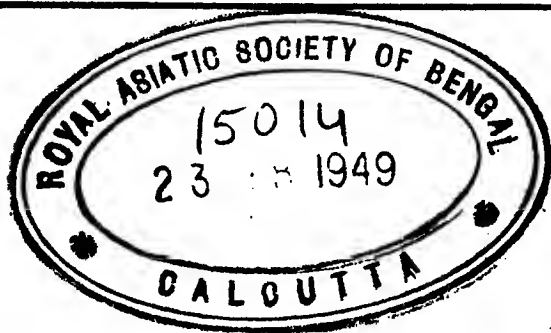
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TO
MY LORD
WHOSE
LOVE IS LIMITLESS.

FOREWORD.

In this book Mr. Bhaumik has discussed in a convenient and comprehensive form the law relating to procedure: the matter of civil appeals and revision. He has collected the relevant case and statute law on the subject and has carefully discussed the law of civil appeal and revision in all its most important practical aspects. I think the book will be **most useful both to Bench and Bar.**

A. EDGLEY.

PREFACE.

Questions of grave importance and subtlety often crop up in the matter of civil appeals and revision, and consequently, a treatise dealing with the case and statute law and also the practice and procedure relating to them may be fairly hoped to assist the Profession in a great measure. The principles of law have been throughout stated with the greatest possible lucidity and the well-recognised leading cases have been duly noticed to clarify them. The subjects have been, with a view to affording real assistance to concrete cases, dealt with under different chapters and nothing that is calculated to throw light on them has been neglected.

I have incorporated in the book the relevant sections of the Code of Civil Procedure, the High Court Rules in the matter of original and appellate jurisdiction, the Letters Patent of different High Courts, the relevant sections of the Government of India Act and the Rules of the Federal Court. I have tried to make the book most up-to-date with case-laws as far as practicable.

I express my deep gratitude to the Hon'ble Mr. Justice Norman George Armstrong Edgley, M.A., I.C.S., Bar.-at-Law, of the Calcutta High Court, for favouring me with a Foreword of the book.

CALCUTTA,
19th January, 1939. }

K. N. BHAUMIK.

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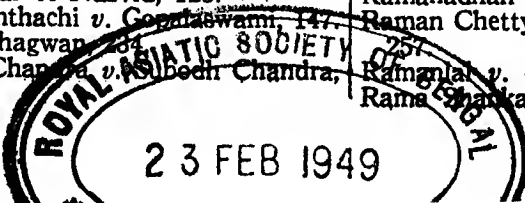
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LAW OF CIVIL APPEAL AND REVISION

C. P. Code.

APPEAL, FROM ORIGINAL DECREES.

* **96.** (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

Appeal from original decree.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

97. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Appeal from final decree where no appeal from preliminary decree.

98. (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of

Decision where appeal heard by two or more Judges.

such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

APPEALS FROM APPELLATE DECREES.

Second appeal.

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a

High Court, on any of the following grounds, namely:—

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

101. No second appeal shall lie except on the grounds mentioned in section 100.

Second appeal on no other grounds.

102. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

No second appeal in certain suits.

103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal which has not been determined by the lower appellate Court or which has been wrongly determined by such Court by reason of any illegality, omission, error or defect such as is referred to in sub-section (1) of Section 100.

Power of High Court to determine issues of fact.

APPEALS FROM ORDERS.

Orders from
which appeal
lies.

104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force from no other orders:—

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court;
- (b) an order on an award stated in the form of a special case;
- (c) an order modifying or correcting an award;
- (d) an order filing or refusing to file an agreement to refer to arbitration;
- (e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
- (f) an order filing or refusing to file an award in an arbitration without the intervention of the Court;
- (ff) an order under section 35A;
- (g) an order under section 95;
- (h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;
- (i) any order made under rules from which an appeal is expressly allowed by rules.

Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.

(2) No appeal shall lie from any order passed in appeal under this section.

105. (1) Save as otherwise expressly Other orders. provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

106. Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court. What Courts to hear appeals.

GENERAL PROVISIONS RELATING TO APPEALS.

107. (1) Subject to such conditions and limitations as may be prescribed, an appellate Powers of appellate Court. Court shall have power—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

Procedure in appeals from appellate decrees and orders.

108. The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

APPEALS TO THE KING IN COUNCIL.

When appeals lie to King in Council.

109. Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council—

- (a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction;

- (b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction; and
- (c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

110. In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

Value of subject-matter.

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value.

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

111. Notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council—

Bar of certain appeals.

(a) from the decree or order of one Judge of a High Court *constituted by His Majesty by Letters Patent*, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being; or

(b) from any decree from which under section 102 no second appeal lies.

NOTE.—The words in italics have been substituted for “established under the Indian High Courts Act, 1861, or the Government of India Act, 1915” by the Government of India (Adaptation of Indian Laws) Order, 1937.

Appeals
to Federal
Court.

111A. *Where a certificate has been given under section 205 (1) of the Government of India Act, 1935, the three last preceding sections shall apply in relation to appeals to the Federal Court as they apply in relation to appeals to His Majesty in Council, and accordingly references to His Majesty shall be construed as references to the Federal Court:*

Provided that—

(a) *so much of the said sections as delimits the cases in which an appeal will lie shall be construed as delimiting the cases in which an appeal will lie without the leave of the Federal Court otherwise than on the ground that a substantial question of law as to the interpretation of the said Act, or any Order in Council made thereunder, has been wrongly decided;*

(b) *in determining under clause (c) of section 109 whether the case is fit one for appeal, and, under section 110, whether the appeal involves a substantial question of law, any question of law as to the interpretation of the said Act, or any Order in Council made thereunder, shall be left out of account.*

NOTE.—This section has been newly inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Savings.

112. (1) Nothing contained in this Code shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

ORDER XLI.

Appeals from Original Decrees.

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the appellate Court dispenses therewith) of the judgment on which it is founded.

Form of appeal.

What to accompany memorandum.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

Contents of memorandum.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Grounds which may be taken in appeal.

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned

Rejection or amendment of memorandum.

to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of proceedings and of execution.

Stay by appellate Court.

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Court which passed the decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree

may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the appellate Court, or the appellate Court may for like cause direct the Court which passed the decree to take such security.

Security in case of order for execution of decree appealed from.

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending from such

decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

No security to be required from the Government or a public officer in certain cases.

7. No such security as is mentioned in rules 5 and 6 shall be required from the Secretary of State for India in Council or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Rule 7 has been omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Exercise of powers in appeal from order made in execution of decree.

8. The powers conferred by rules 5 and 6 shall be exerciseable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal.

Registry of memorandum of appeal.

9. (1) Where a memorandum of appeal is admitted, the appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of Appeals.

(2) Such book shall be called the Register of Appeals.

Appellate Court may require appellant to furnish security for costs.

10. (1) The appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security

for the costs of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India other than the property (if any) to which the appeal relates.

Where appellant resides out of British India.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

11. (1) The appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

Power to dismiss appeal without sending notice to lower Court.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

12. (1) Unless the appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

Day for hearing appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Appellate Court to give notice to Court whose decree appealed from.

13. (1) Where the appeal is not dismissed under rule 11, the appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

Transmission of papers to appellate Court.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the appellate Court.

Copies of exhibits in Court whose decree appealed from.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

Publication and service of notice of day for hearing appeal.

14. (1) Notice of the day fixed under rule 12 shall be affixed in the appellate Court-house, and a like notice shall be sent by the appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions

applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

Appellate Court may itself cause notice to be served.

15. The notice to the respondent shall declare that, if he does not appear in the appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Contents of notice.

Procedure on hearing.

16. (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

Right to begin.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

17. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Dismissal of appeal for appellant's default.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Hearing appeal *ex parte*.

18. Where on the day fixed, or on any other day to which the hearing may be ad-

Dismissal of appeal where notice not

served in
consequence
of appellant's
failure to
deposit
costs.

journeyed, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed :

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

Re-admission of appeal dismissed for default.

19. Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17 or rule 18, the appellant may apply to the appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Power to adjourn hearing and direct persons appearing interested to be made respondents.

20. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

Re-hearing on application of respondent against

21. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the appellate

Court to rehear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

whom *ex-parte* decree made.

22. (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the appellate Court may see fit to allow.

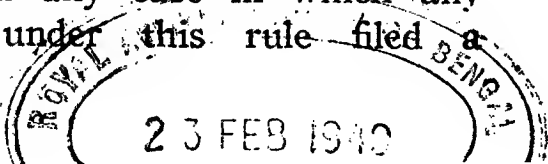
Upon hearing respondent may object to decree as if he had preferred separate appeal.

(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

Form of objection and provisions applicable thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a



memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

Remand of
case by
appellate
Court.

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Where evi-
dence on
record suffi-
cient,
appellate
Court may
determine
case finally.

24. Where the evidence upon the record is sufficient to enable the appellate Court to pronounce judgment, the appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the appellate Court proceeds.

25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate Court essential to the right decision of the suit upon the merits, the appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

Where appellate Court may frame issues and refer them for trial to Court whose decree appealed from.

and such Court shall proceed to try such issues, and shall return the evidence to the appellate Court together with its findings thereon and the reasons therefor.

26. (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the appellate Court, present a memorandum of objections to any finding.

Findings and evidence to be put on record. Objections to finding.

(2) After the expiration of the period so fixed for presenting such memorandum the appellate Court shall proceed to determine the appeal.

Determination of appeal.

27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate Court. But if—

Production of additional evidence in appellate Court.

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the appellate Court requires any document to be produced or any

witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an appellate Court, the Court shall record the reason for its admission.

Mode of taking additional evidence.

28. Wherever additional evidence is allowed to be produced, the appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the appellate Court.

Points to be defined and recorded.

29. Where additional evidence is directed or allowed to be taken, the appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgment in appeal.

Judgment when and where pronounced.

30. The appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

31. The judgment of the appellate Court shall be in writing and shall state—

Contents,
date and
signature of
judgment.

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and,
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the appellate Court may pass a decree or make an order accordingly.

What judgment may direct.

33. The appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection:

Power of Court of appeal.

Provided that the appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from

whose decree the appeal is preferred has omitted or refused to make such order.

Illustration.

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The appellate Court decides in favour of X. It has power to pass a decree against Y.

Dissent to be recorded.

34. Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

Decree in appeal.

Date and contents of decree.

35. (1) The decree of the appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any

Judge dissenting from the judgment of the Court to sign the decree.

36. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the appellate Court and at their expense.

Copies of judgment and decree to be furnished to parties.

37. A copy of the judgment and of the decree, certified by the appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the appellate Court shall be made in the register of civil suits.

Certified copy of decree to be sent to Court whose decree appealed from.

ORDER XLII.

Appeals from Appellate Decrees.

1. The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

Procedure.

• ORDER XLIII.

Appeals from Orders.

1. An appeal shall lie from the following orders under the provisions of section 104, namely:—

Appeals from orders.

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;

- (b) an order under rule 10 of Order VIII pronouncing judgment against a party;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;
- (e) an order under rule 4 of Order X pronouncing judgment against a party;
- (f) an order under rule 21 of Order XI;
- (g) an order under rule 10 of Order XVI for the attachment of property;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (i)(a) an order under rule 57 of Order XXI, directing that an attachment shall cease or directing or omitting to direct that an attachment shall continue;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

- (l) an order under rule 10 of Order XXII giving or refusing to give leave;
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (o) an order under rule 2, rule 4 or rule 7 of Order XXXIV refusing to extend the time for the payment of mortgage-money;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;
- (r) an order under rule 1, rule 2, or rule 4 or rule 10 of Order XXXIX;
- (s) an order under rule 1 or rule 4 of Order XI.;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;
- (u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the appellate Court;
- (v) an order made by any Court other than a High Court refusing the

grant of a certificate under rule 6 of Order XLV;

(w) an order under rule 4 of Order XLVII granting an application for review.

Procedure.

2. The rules of Order XLI shall apply, so far as may be, to appeals from orders.

ORDER XLIV.

Pauper Appeals.

Who may
appeal as
pauper.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memornadum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:

Procedure on
application
for admis-
sion of
appeal.

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Inquiry into
pauperism.

2. The inquiry into the pauperism of the applicant may be made either by the appellate Court or under the orders of the appellate Court by the Court from whose decision the appeal is preferred:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the appellate Court sees cause to direct such inquiry.

ORDER XLV.

Appeals to the King in Council.

1. In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

"Decree" defined.

2. Whoever desires to appeal to His Majesty in Council shall apply by petition to the Court whose decree is complained of.

Application to Court whose decree complained of.

3. (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to His Majesty in Council.

Certificate as to value or fitness.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated: but

Consolidation of suits.

suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.

Remission of
dispute to
Court of
first instance.

5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to His Majesty in Council, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

Effect of
refusal of
certificate.

6. Where such certificate is refused, the petition shall be dismissed.

Security and
deposit re-
quired on
grant of
certificate.

7. (1) Where the certificate is granted, the applicant shall, within ninety days or such further period, not exceeding sixty days, as the Court may upon cause shown allow from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,—

(a) furnish security in cash or in Government securities for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to His Majesty in Council a correct

copy of the whole record of the suit, except—

- (1) formal documents directed to be excluded by any order of His Majesty in Council in force for the time being;
- (2) papers which the parties agree to exclude;
- (3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and
- (4) such other documents as the High Court may direct to be excluded:

Provided that the Court at the time of granting the certificate may, after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished:

Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security.

(2) Where the applicant prefers to print said, he shall also within the time mentioned in sub-rule (1) deposit the amount required to in sub-rule (1), deposit the amount required to defray the expense of printing such copy.

8. Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

Admission of
appeal and
procedure
thereon.

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Revocation
of acceptance
of security.

9. At any time before the admission of appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Power to
dispense
with notices
in case of
deceased
parties.

9A. Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court:

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the Court-house of the Judge of the District in which the suit was originally brought, and by publication in such newspapers as the Court may direct.

10. Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to His Majesty in Council, such security appears inadequate,

Power to order further security or payment.

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

11. Where the appellant fails to comply with such order, the proceedings shall be stamped,

Effect of failure to comply with order.

and the appeal shall not proceed without an order in this behalf of His Majesty in Council,

and in the meantime execution of the decree appealed from shall not be stayed.

12. When the copy of the record, except as aforesaid, has been transmitted to His Majesty in Council, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

Refund of balance deposit.

13. (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

Power of Court pending appeal.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

- (a) impound any moveable property in dispute or any part thereof, or
- (b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which His Majesty in Council may make on the appeal, or
- (c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which His Majesty in Council may make on the appeal, or
- (d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

Increase of
security
found in-
adequate.

14. (1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,—

- (a) if the original security was furnished by the appellant, the Court may, on the application of the respondent,

execute the decree appealed from as if the appellant had furnished no such security;

- (b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

15. (1) Whoever desires to obtain execution of any order of His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to His Majesty was preferred.

Procedure
to enforce
orders of
King in
Council.

(2) Such Court shall transmit the order of His Majesty in Council to the Court which passed the first decree appealed from, or to such other Court as His Majesty in Council by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order for the adjustment of financial transactions between the Imperial and the Indian Governments.

(4) Unless His Majesty in Council is pleased otherwise to direct, no order of His Majesty in Council shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.

After the words "of the order" in sub-rule (3), the words "by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty's Treasury" have been omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Appeal from
order relating
to execution.

16. The orders made by the Court which executes the order of His Majesty in Council, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

17. Where a certificate has been given under section 205 (1) of the Government of India Act, 1935, the provisions of this Order shall apply in relation to appeals to the Federal Court as they apply in relation to appeals to His Majesty in Council and references in this Order to His Majesty in Council and to any Order of His Majesty in Council shall be construed as references to the Federal Court and the rules of the Federal Court:

Appeals to
Federal
Court.

Provided that—

- (a) rule 3 of this Order shall have effect as if at the end of sub-rule (1) thereof there were inserted the words “apart from any question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder”;
- (b) where the only ground of appeal stated in the petition is that any question of law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder has been wrongly decided, the petition need not pray for such a certificate as is mentioned in rule 3, and the like proceedings shall be had thereon as if such a certificate had been given except that no security shall be

required for the costs of the respondent.”

[Newly inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.]

HIGH COURT RULES

ALLAHABAD.

ORDER XLI.

Substitute the following for R. 3 (1):—

“3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, or accompanied by the copies mentioned in rule 1 (1), it may be rejected or where the memorandum of appeal is not drawn up in the manner prescribed, it may be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.”

Rejection or amendment of memorandum.

Rule 10 (1).

Add the following proviso:—

“Provided also that in case of every appeal other than a pauper appeal from any decree or order passed in appeal by any Court subordinate to the High Court confirming the decree or order of the Court below or modifying it only in favour of the appellant or in respect of costs, the appellant shall, within two weeks of the admission of the appeal, or within such time as the Court may for special reasons allow, deposit in the appellate Court, security for the costs of the appeal, and for all costs ordered by the Courts below to be paid by him, which remain unpaid.”

Add Clause (2)—

“(2) In the second proviso to clause (1) of this rule “costs of the appeal” means advocate’s fee calculated on the valuation of the appeal, together with a sum of Rs. 2 for court-fee on vakalatnama to be filed by the respondent, Re. 1 inspection fee, and in case of second appeals outside the jurisdiction of a single

Judge a further sum of Rs. 10 for printing charges payable by respondent."

Original Clause (2)—of the rule shall be numbered as (3).

14. *Add* the following sub-rule (3):—

"14. (3) Notwithstanding anything in sub-rule (i) it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent, other than a person impleaded for the first time in the appellate Court, unless he has appeared and filed an address for service either in the trial Court or in the case of a second appeal, in the lower appellate Court, or has appeared in the appeal."

Rule 27 (1).—(1) *Insert* the following as clause (b):—

"(b) the evidence sought to be adduced by a party to the appeal, which after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree or order under appeal was passed or made, or"

(2) Convert the existing clause "(b)" into clause "(c)".

Rule 37.—*Delete* the words "and shall be filed with the original proceedings in the suit" in lines 4 and 5 of the rule; and *add* a new paragraph as follows:

"Where the appellate Court is the High Court, the copies aforesaid shall be filed with the original proceedings in the suit."

Insert the following at the end of the Order XLI:—

38. (1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, or subsequently altered under Order VII, rule 24, or Order VIII, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition.

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in

the Court below, and notices and processes shall issue from the appellate Court to such addresses.

(3) Rules 21, 22, 23 and 24 of Order VII shall apply, so far as may be, to appellate proceedings.

ORDER XLII.

Substitute the following for rule 1:—

1. The rules of Order XI, I shall apply, so far as Procedure. may be, to appeals from appellate decrees, subject to the following provision:—

It shall not be necessary for an appellant in a second appeal to produce a copy of the judgment of the Court of first instance or any judgment other than the judgment on which the decree appealed against may be founded, and the record of the case shall be sent for at the expense of the appellant.

ORDER XLIII.

Rule I (u).

For the words “an order under rule 23 of Order XI, I” *read* “any order”.

Insert the following rule as R. 3 at the end of Order XLIII:—

In every appeal under rule I, in every miscellaneous case, and in every suit dismissed for default, a formal order shall be drawn up stating clearly the determination of the appeal or case, the costs incurred, and the parties, if any, by whom such costs are to be paid.

ORDER XLV.

Rule 7 (1) (a).—In rule 7 (1) (a) between the words “the respondent” and the word “and” *insert* the following words: —

“except where the Secretary of State for India in Council is the applicant.”

For rule 15 (1) substitute:—

15. (1) Whoever desires to obtain:—

(a) execution of any order of Her Majesty in Council, or

(b) where an appeal has been dismissed by His Majesty in Council for want of prosecution, an order of the Court from which an appeal to his Majesty was preferred terminating proceedings and determining the costs,

shall apply to the said Court by a petition, accompanied by a certified copy of the decree passed or order made by His Majesty in Council of which execution is desired or to which effect is to be given and a memorandum of all costs incurred in India that are claimed in pursuance thereof.

BOMBAY.

ORDER XLI.

After rule 3, the following rule shall be inserted, namely:—

3A. Where an appellant applies for delay to be excused, notice to show cause shall at once be issued to the respondent and the matter shall be finally decided before notice is issued to the Court from whose decree the appeal is preferred under rule 13.

Rule 38 has been added—*Same* as Rule 38 newly added by the Allahabad High Court. *

ORDER XLIII.

Rule 1—Clause (w) shall be *deleted*.

In sub-rule (2) or rule 3 of Order XLV, *after* the words “to show cause why the said certificate should not be granted” the following words shall be *inserted*, namely:—

“unless it thinks fit to refuse the certificate.”

CALCUTTA.**ORDER XLI.**

Rule 14.—*Insert* the following as clause (3):—

“(3) It shall be in the discretion of the appellate Court to make an order, at any stage of the appeal whether on its own motion, or, *ex parte*, dispensing with service of such notice on any respondent who did not appear, either at the hearing in the Court whose decree is complained of or at any proceeding subsequent to the decree of that Court or on the legal representatives of any such respondent:—

Provided that:—

- (a) The Court may require notice of the appeal to be published in any newspaper or newspapers as it may direct.
- (b) No such order shall preclude any such respondent or legal representative from appearing to contest the appeal.

For Rule 1, Or. XLII *substitute* the following:—

1. The Rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees:

Provided that every memorandum of appeal from an appellate decree shall be accompanied by a copy of the decree appealed from and also (unless the Court sees fit to dispense with any or all of them), by copies of the judgment on which the said decree is founded and of the judgment and decree of the Court of first instance.

(*Vide* High Court Notification No. 1750-G., dated the 15th February 1938.)

LAHORE.**ORDER XLI.**

Rule 1.—The following proviso has been *added* to sub-rule (1):—

“Provided that when two or more cases are tried together and decided by the same judgment, and two

or more appeals are filed against the decrees, whether by the same or different appellants, the officer appointed in this behalf may, if satisfied that the questions for decision are analogous in each appeal, dispense with the production of more than one copy of the judgment."

Rule 35.—The following further proviso was *added* :—

"Provided also in the case of the High Court, that in the absence of a Judge who passed a decree, or one or more of the Judges who passed a decree, either the Registrar or the Deputy Registrar of the Court shall sign the decree on behalf of such absent Judge or Judges; but that neither the Registrar nor the Deputy Registrar shall sign such decree on behalf of a Judge who dissented from the judgment of the Court."

Rule 38.—*After* rule 37 new rule 38 shall be *added* :—

"38. (1) An address for service filed under Order VII, rule 19, or Order VIII, rule 11, or subsequently altered under Order VII, rule 24, or Order VIII, rule 12, shall hold good during all appellate proceedings arising out of the original suit or petition.

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from the appellate Court to such addresses.

(3) Rules 21, 22, 23, 24 and 25 of Order VII shall apply, so far as may be, to appellate proceedings."

ORDER XLII.

Rule 2.—*Add* the following rule as rule 2 :—

"2. In addition to the copies specified in Order XLI rule 1, the memorandum of appeal shall be accompanied by a copy of the judgment of the Court of first instance, unless the appellate Court dispenses therewith."

MADRAS.**ORDER XLI.**

1. (1) *Add* the following sentence to sub-r. (1) of r. 1:—

The copy of the judgment shall be a printed copy in every case in which the High Court has prescribed that the judgment shall be printed when a copy is applied for, for the purpose of appeal.

Add the following as a proviso to O. 41, r. 1 (1):—

Provided that, in appeals from decrees or orders under any special or local Act to which the provisions of Parts II and III of the Limitation Act, IX of 1908, do not apply and in which certified copies of such decrees or orders have not been granted within the time prescribed for preferring an appeal, the appellate Court may admit the memorandum of appeal subject to the production of the copy of the decree or order appealed from within such time as may be fixed by the Court.

Add the following sentence to sub-rule (2) of R. 1:—

The memorandum shall also contain a statement of the valuation of the appeal for the purposes of the Court-fees Act.

Add the following as a new sub-rule (3) to Or. XLI, r. 1:—

(3) When an appeal is presented after the period of limitation prescribed therefor it shall be accompanied by a petition supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period, and the Court shall not proceed to deal with the appeal in any way (otherwise than by dismissing it either under rule 11 of this Order or on the ground that it is not satisfied as to the sufficiency of the reasons for extending the period of

limitation) until notice has been given to the respondent and his objections, if any, to the Court acting under the provisions of section 5 of Act IX of 1908 have been heard.

Rule 5.—*Substitute* the following for the existing sub-rule (1) to rule 5 of Order XLI:—

“5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the appellate Court may for sufficient cause order stay of execution of such decree and may, when the appeal is against a preliminary decree, stay the making of a final decree in pursuance of the preliminary decree or the execution of any such final decree, if already made.

Rule 9.—In rule 9, *delete* sub-rule (2) and *substitute* the following in its place:—

“Such book shall be called the Register of Appeals.”

Rule 14.—*Insert* the following as a proviso to sub-rule (1):—

“Provided that the appellate Court may dispense with service of notice on respondents against whom the suit has proceeded *ex parte* in the Court from whose decree the appeal is preferred.”

18. In Order 41, rule 18, *after* the words “cost of serving the notice” *insert* the words “or if the notice is returned unserved, to deposit within any subsequent period fixed the sum required to defray the cost of any further attempt to serve the notice.”

Re-number rule 19 as rule 19 (1) and *insert* the following as sub-rule (2):—

“(2) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1),”

Rule 23.—*Substitute* the following for the present Rule 23:—

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or where the appellate Court in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case, the appellate Court may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and shall send a copy of the judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Rule 31.—*Substitute* the following for r. 31:—

31. The judgment of the appellate Court shall be in writing and shall state:—

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reason for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall bear the date on which it is pronounced and shall be signed by the Judge or the Judges concurring them: •Provided that, where the presiding Judge is specially empowered by the High Court to pronounce his judgment by dictation to a shorthand writer in open Court, the transcript of the judgment so pronounced shall, after such revision as may be deemed necessary, be signed by the Judge.

Rule 35 (2).—*Substitute* the following:—

“(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and

respondent, their addresses for service and a clear specification of the relief granted or other adjudication made."

ORDER XLIA (New).

Appeals to the High Court from the original decrees of subordinate Courts.

1. The rules contained in Order XLI shall apply to appeals in the High Court of Judicature at Madras with the modifications contained in this order.

2. (1) The memorandum of appeal shall be accompanied by the prescribed fees for service of notice of appeal and the receipt of the accountant of the Court for the sum prescribed by the rules of Court.

(2) Notwithstanding anything contained in rule 22 of Order XLI the period prescribed for entry of appearance by the respondent and filing by him of memorandum of cross objections, if any, shall, unless otherwise ordered, be thirty days from the service of notice upon him.

3. (1) If the respondent intends to appear and defend the appeal, he shall, within the period specified in the notice of appeal, enter an appearance by filing in Court a memorandum of appearance.

(2) If a respondent fails to enter an appearance within the time and in the manner provided by the sub-rule above, he shall not be allowed to translate or print any part of the record:

Provided that a respondent may apply by petition for further time, and the Court may thereupon make such order as it thinks fit. The application shall be supported by evidence to be given on affidavit as to the reason for the applicant's default, and notice thereof shall be given to the appellant and all parties who have entered an appearance. Unless otherwise ordered the applicant shall pay the costs of all parties appearing upon the application.

4. (1) The memorandum of appeal and the memorandum of appearance shall state an address for service within the city of Madras at which service of any notice, order or process may be made on the party filing such memorandum.

(2) If a party appears in person, the address for service may be within the local limits of the jurisdiction of the Court from whose decree the appeal is preferred:

Provided that if such party subsequently appears by a pleader, he shall state in the vakalat an address for service within the city of Madras, and shall give notice thereof to each party who has appeared.

(3) If a party appears by a pleader, his address for service shall be that of his pleader and all notices to the party shall be served on his pleader at that address.

5. The Court may direct that service of a notice of appeal or other notice or process shall be made by sending the same in a registered cover prepaid for acknowledgment and addressed to the address for service of the party to be served which has been filed by him in the lower Court: Provided that, after a party has given notice of an address for service in accordance with Rule 4, service of any notice or process shall be made at such address.

6. All notices and processes, other than a notice of appeal, shall be sufficiently served if left by a party or his pleader, or by a person employed by the pleader, or by an officer of the Court, between the hours of 11 A.M. and 5 P.M. at the address for service of the party to be served.

7. Notices which may be served by a party or his pleader under Rule 6, or which are sent from the office of the Registrar, may, unless the Court otherwise direct, be sent by registered post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered at the time

of service thereof and the posting thereof shall be a sufficient service.

8. If there are several respondents, and all do not appear by the same pleader, they shall give notice of appearance to such of the other respondents as appear separately.

9. A list of all cases in which notice is to be issued to the respondent shall be affixed to the Court notice board after the case has been registered.

10. (1) If upon a case being called on for hearing by the Court, it appears that the record has not been translated and printed in accordance with the rules of Court, the Court may hear the appeal or dismiss it, or may adjourn the hearing and direct the party in default to pay costs, or may make such order as it thinks fit.

(2) If the Court proceeds to hear the appeal, it may refuse to read or refer to any part of the record which is not included in the printed papers.

11. When costs are awarded, unless the Court otherwise orders, the costs of a party appearing upon any application before the Registrar or the Court, shall be Rs. 15, and the costs of appearing when the appeal is in the daily cause list for final hearing and is adjourned shall be Rs. 30. At the request of any party, the Registrar shall cause the order to be drawn up and the said costs to be inserted therein.

Memorandum of Objections.

12. (1) If the acknowledgment mentioned in Rule 22 (3) of Order XLI is not filed, the respondent shall, together with the memorandum of objections, file so many copies thereof as there are parties affected thereby.

(2) The prescribed fees for service shall be presented together with the memorandum to the Registrar.

13. If any party or the pleader of any party to whom a memorandum of objections has been tendered has refused or neglected for three days from the date of tender to give the acknowledgment mentioned in Rule 22 (3) of Order XLI, the respondent may file an affidavit stating the facts and the Registrar may dispense with the service of the copies mentioned in Rule 12 (1).

14. Rule 31 of Order XLI shall not apply to the High Court. If the judgment is given orally a shorthand note thereof shall be taken by an officer of the Court and a transcript made by him shall be signed or initialled by the Judge or by the Judges concurring therein after making such corrections as may be considered necessary.

ORDER XLIB (NEW).

1. The rules of Order XLIA shall apply, so far as may be, to appeals to the High Court of Madras under clause 15 of the Letters Patent of the said Court:

Provided that it shall not be necessary to file copies of the judgment and decree appealed from.

2. Notice of the appeal shall be given in manner prescribed by Order XLI A, Rule 6, or if the party to be served has appeared in person, in manner prescribed by Rule 5 of the said Order:

ORDER XLII (NEW).

APPEALS FROM APPELLATE DECREES.

1. The rules of Order XLI and Order XLI A shall apply, so far as may be, to appeals to the High Court of Judicature at Madras from appellate decrees with the modifications contained in this Order:

Provided that in appeals from appellate decrees the memorandum of appeal shall be accompanied by a copy of the decree appealed from and four printed copies.

of the judgment on which it is founded, one of them being a certified copy; and also four printed copies of the judgment of the Court of first instance, one of them being a certified copy.

2. (1) The memorandum of appeal shall be printed or type-written and shall be accompanied by the following papers:—

One certified copy of the decrees of Court of first instance and of the appellate Court; and four printed copies of each of the judgments of the said Courts, one copy of each judgment being a certified copy.

(2) If any ground of appeal is based upon the construction of a document, a printed or type-written copy of such document shall be presented with the memorandum of appeal:

Provided that if such document is not in the English language and the appellant appears by a pleader, an English translation of the document certified by the pleader, to be a correct translation shall be presented.

(3) If the appellant fails to comply with this rule, the appeal may be dismissed.

ORDER XLIII.

Rule 1.—*Substitute* the following for 1 (d) of Order XLIII of the Code of Civil Procedure:—

(d) an order under rule 13 or rule 15 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree or order passed *ex-parte*.

Substitute the following for sub-rule (s) of rule 1 of Order XLIII of the Code of Civil Procedure:—

(s) An order under rule 1 or 4 of Order XL except an order under the proviso to sub-rule (2) of rule 4.

Rule 2.—*Substitute* the following for rule 2:—

2. The rules of Order XLI and of Order XLI-A shall apply, so far as may be, to appeals from the orders specified in rule 1 and other orders of any Civil Court from which an appeal to the High Court is allowed under any provision of law:

Provided that in the case of appeals against interlocutory orders made prior to decree, the Court which passed the order appealed from shall not send the records of the case unless an order has been made for stay of further proceedings in that Court.

Rule 3.—*Substitute* the following for rule 3 of Order XLIII of the Code of Civil Procedure:—

3. (1) The provisions of Order XLII shall apply, so far as may be, to appeals from appellate orders. Appeal
from appel-
late orders.

(2) A memorandum of appeal from an appellate order shall be accompanied by a certified copy of the judgment and of the order of the Court of first instance and by a certified copy of the judgment and of the order in the appellate Court.

(3) If any ground of appeal is based upon the construction of a document, a printed or type-written copy of such document shall be presented with memorandum of appeal:

Provided that, if such document is not in the English language and the appellant appears by a pleader, an English translation of the document certified by the pleader to be a correct translation shall be presented.

PATNA.

ORDER XLI.

Add the following as rule 14 (A) in Order XLI:—

14.(A). The appellate Court may, in its discretion dispense with the service of notice hereinbefore required on a respondent, or on the legal

representative of a deceased respondent, in a case where such respondent did not appear, either at any stage of the proceedings in the Court whose decree is appealed from or in any proceedings subsequent to the decree of that Court and no relief is claimed against such opposite party or respondent or his legal representative either in the original case or appeal.

Add the following rule after rule 37:—

“38. (1) An address for service filed under Order VII, rule 19, or, Order VIII, rule 11, or subsequently altered under Order VII, rule 22, or Order VII, rule 12, shall hold good for all notices of appeals and all appellate proceedings arising out of the original suit or petition.

(2) Every memorandum of appeal shall state the addresses for service given by the opposite parties in the Court below, and notices and processes shall issue from appellate Court to such addresses.

(3) Rules 21 and 22 of Order VII shall apply, so far as may be, to appellate proceedings.”

RANGOON.

ORDER XLI.

Rule 1.—The following shall be *substituted* for sub-rule (2) of rule 1:—

“(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively. When Burmese dates are given the corresponding English dates shall be added. The memorandum shall also contain:—

- (i) the full names and addresses of all parties;
- (ii) particulars (class, number, year and Court) of the original proceedings; and
- (iii) the value of appeal, (a) for court-fees, and (b) for jurisdiction.

Material corrections or alterations shall be authenticated by the initials of the person signing the memorandum."

38. To Order XLI, r. 1, the following shall be added as sub-rule (3):—

(3) The appellant shall present, along with the petition of appeal, as many copies on plain paper of the grounds of appeal as there are respondents.

Rule 14.—*Add* the following as sub-rule (3) to rule 14:—

"(3) Nothing in these rules requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to an opposite party or respondent who did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court, or to the legal representative of any such opposite party or respondent if deceased."

ORDER XLIII.

Rule 1.—The following shall be *added* as clause (ii), namely:—

(ii) A garnishee under rule 63C or rule 63E, and an order as to costs in garnishee proceedings under rule 63G of Order XXI."

Appeals to the Privy Council.

56. Applications to the Court for leave to appeal to His Majesty in Council shall be made within 90 days of the decree or order to be appealed from, subject to the provisions of sections 4, 5, and 12 of the Indian Limitation Act, 1908.

57. Petitions for leave to appeal to His Majesty in Council shall be presented to the Deputy Registrar, who, if the petition is in order, will issue notice in the form attached on the Respondent to show cause before

a Bench consisting of at least two Judges why the certificate prayed for should not be granted.

58. When a certificate is granted, the appellant shall within the period prescribed by Order XLV. Rule 7 give security for the costs of the respondent to the extent of Rs. 4,000. In cases of special magnitude and importance, the Court may require security for a larger sum; provided that security shall not in any case be required for a sum exceeding Rs. 10,000.

59. Security shall ordinarily be furnished by the deposit of cash or Government securities to the amount required, but subject to the provisions of these rules and of the provisos to sub-rule (1) of rule 7 in Order XLV, it may be furnished in some other form approved by the Court. Cash deposited under this rule shall be paid to the Bailiff of the Court. Government security so deposited shall be made over to the Registrar or the Deputy Registrar.

60. When cash or Government securities are deposited under Rule 59 a security bond shall be executed in Form A or Form B attached, as the case may be.

61. If any other form of security is tendered, the appellant shall ordinarily file with the petition for leave to appeal to His Majesty in Council a separate application and if a charge on immoveable property is tendered, shall also annex thereto a draft mortgage bond together with a valuation of the property verified by affidavit. The value of immoveable property shall be at least double the amount of the security required; and in the case of land on which there are buildings which are brought into the valuation of the property, or where a mortgage of building only is tendered, the buildings must be insured. A tender of such security, if made later than the date of filing the petition for leave to appeal, will not be accepted unless the Court is satisfied that the delay in making it was inevitable, and in any case shall not be accepted after the certificate is granted.

62. On tender of security other than cash or Government securities, notice of the tender shall, if possible, be given to the opposite party requiring him to show cause, if he wishes to do so, within the time fixed (see Rule 57 above) for granting the certificate, why the security tendered should not be accepted. No adjournment shall be granted to the opposite party to contest the nature of such security.

63. If the security tendered appears to the Court to be unsatisfactory, the appellant shall be so informed.

64. In every security bond, the appellant shall bind himself to pay such costs of the opposite party as may be allowed by the Court in the event of the appeal not being prosecuted.

65. Within the period prescribed by Order XLV, rule 7, the appellant shall also deposit with the Bailiff of the Court the sum of Rs. 1,000 or such sum as the Deputy Registrar may determine to defray the expense of printing, translating, transcribing, indexing and transmitting, a copy of the record.

66. Where an appellant, having obtained a certificate for the admission of an appeal fails within the time prescribed to furnish the security or make the deposit required in accordance with Rules 58 and 65, (or apply with due diligence to the Court for an order admitting the appeal), the Court may, on its own motion or on an application on that behalf made by the respondent, cancel the certificate for admission of the appeal, and may give such direction as to the costs of the appeal and the security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

67. When the Court admits the appeal, it shall always clearly state in its order who are actual parties at the time of admission.

68. On a certificate being granted to appeal to His Majesty in Council, the Deputy Registrar shall

immediately call for the transmission of the record and all material papers. The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

69. The Deputy Registrar shall on payment to him of a fee of Rs. 16, prepare an index of the papers which make up the record. This index shall be prepared within three weeks of the date of receipt of the records or of the date of deposit required by Rule 65, whichever is later. As soon as the index is ready, a notice in form attached shall be issued by the Deputy Registrar requiring the advocates of both parties to attend his office for the purpose of settling the index within the time specified in the notice. If the Advocates fail to attend or to settle the index within the time aforesaid, the matter shall be reported for the orders of the Court without further delay. Any costs incurred on such account shall be borne in manner as the Court directs.

70. The Registrar or the Deputy Registrar as well as the parties and their legal Agents shall endeavour, to exclude from the record all documents, (more particularly such as are merely formal) that are not relevant to the subject-matter of the appeal, and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents, but the documents omitted to be copied or printed shall be enumerated in a manuscript list to be transmitted with the record.

71. If the parties are agreed as to the papers to be omitted, those papers shall not be transcribed. Where in the course of the preparation of a record one party objects to the inclusion of the document on the ground that it is unnecessary or irrelevant and the

other party nevertheless insists upon its being included, and the Court allows the document to be included, the records, as printed, shall with a view to the subsequent adjustment of the costs of and incidental to such document indicate in the index of papers or otherwise, the fact and the party by whom, the inclusion of of the document was objected to.

72. Where there are two or more appeals arising out of the same matter and the Court is of opinion that it would be for convenience of the Lords of the Judicial Committee and all parties concerned that the appeal should be consolidated, the Court may direct appeals to be consolidated.

73. An appellant who has obtained a certificate for the admission of an appeal may at any time prior to the making of an order admitting the appeal withdraw the appeal on such terms as to costs and otherwise as the Court may direct.

74. An appellant, whose appeal has been admitted shall prosecute his appeal in accordance with the Rules for the time being regulating the general practice and procedure in appeals to His Majesty in Council.

75. Where an appellant, whose appeal has been admitted, desires, prior to the despatch of the record to England, to withdraw his appeal the Court may upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn and appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express order of His Majesty in Council, and costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court thinks fit to direct.

76. Where an appellant whose appeal has been admitted, fails to show due diligence in taking all necessary steps in connection with the preparation of the record, the Court may, either on its own motion or

on the application of the respondent, call upon the appellant to show cause why a certificate should not be issued that the appeal has not been effectually prosecuted by the appellant and if the Court sees fit to issue such a certificate, the appeal shall be deemed as from the date of such certificate to stand dismissed for non-prosecution, without express order of His Majesty in Council, and the costs of the appeal and the security entered into by appellant shall be dealt with in such manner as the Court may think fit to direct.

77. Where at any time between the admission of an appeal and the despatch of the record to England the record becomes defective by reason of the death, or change of status of a party to the appeal, the Court may, notwithstanding the admission of the appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record in place of, or in addition to, the party who has died, or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express order of His Majesty in Council. If, in the opinion of the Court, there has been undue delay in making this application, the Court may order the appellant or the party interested, to take all necessary steps to perfect the record within such time as the Court may direct. and, if he fails to comply with such order, the Court may call upon him to show cause why a certificate should not be issued that the appeal has not been effectually prosecuted, and if the Court sees fit to issue such a certificate, the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express order of His Majesty in Council and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

78. Where the record subsequently to its despatch to England becomes defective by reason of the death, or change of status, of a party to the appeal the Court may, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered, on the record, in place of, or in addition to, the party who has died, or undergone a change of status. If, in the opinion of the Court, there has been undue delay in making this application the Court may order the appellant or the party interested, to take all necessary steps to perfect the record within such time as the Court may direct, and, if he fails to comply with such order, the Court shall report the matter to the Registrar of the Privy Council.

79. The supplementary records dealing with revivor of appeals should be transmitted to England in manuscript and not in print.

Order of arrangement of the papers prefixed by index.

80. The Deputy Registrar shall arrange the papers in the transcript in two parts in the order specified below and shall prefix an index to each part. He shall also attach to each part a certified list of all papers omitted from the transcript under Rule 70.

PART I.

• *Original Court.*

1. Index to Part I.
2. Diary Sheet of the Original Court.
3. Plaint.
4. Written Statement.
5. Examination of the Court under Order X.
6. Issues Settled.
7. Oral evidence for the party beginning, including evidence given by a witness for such party on commission.

8. Oral evidence for the opposite party or parties, including evidence given by a witness for such party or parties on commission.

9. The judgment of the Original Court.

10. The decree of the Original Court.

Appellate Court.

11. The diary sheet of the Appellate Court.

12. The memorandum of appeal to the Appellate Court.

13. Respondent's memorandum of objections under Order XLI, Rule 22.

14. The Judgment of the Appellate Court.

15. The decree of the Appellate Court.

16. The application for a certificate and for leave to appeal to His Majesty in Council.

17. The certificate granted.

18. The Deputy Registrar's certificate that the provisions of Order XLV, Rule 7, has been complied with.

19. The Order declaring the appeal admitted.

Appendix 1A.—Interlocutory proceedings and orders in the Original Court and Appellate Court, except such as the parties agree should be excluded, or the Court directs to be excluded.

Appendix 1B.—List of papers excluded.

PART II.

20. Index to Part II.

21. Exhibits.

Appendix II.—List of formal and other documents excluded.

Records.—Part I should be arranged strictly in chronological order, *i.e.*, in the same order as the index. Part II should be arranged in the most convenient way for the use of the Judicial Committee as the circumstances of the case require. The documents should be printed as far as suitable in chronological

order mixing plaintiff's and defendant's documents together when necessary. Each document should show its exhibit mark, and whether it is plaintiff's or defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter, such as (a) a series of correspondence, or (b) proceedings in a suit other than the one under appeal, should be kept together. The order in the record of the documents in Part II will probably be different from the order of the index, and the proper page number of each document should be inserted in the printed index.

The parties will be responsible for arranging the record in proper order for the Judicial Committee, and in difficult cases Counsel may be asked to settle it.

(3) *Numbering of documents.*—The documents in Part I should be numbered consecutively. The documents in Part II should not be numbered, apart from the exhibit mark.

(4) *Heading of documents.*—Each document should have a heading which should consist of the number or exhibit mark, and the description of the document in the index, without the date.

(5) *Marginal note.*—Each document should have a marginal note which should be repeated on each page over which the document extends, *viz.* :—

PART I.

(a) Where the case has been before more than one Court, the short name of the Court should first appear. Where the case has been before only one Court the name of the Court need not appear.

(b) The marginal note of the document should then appear consisting of the number and the description of the document in the index, with the date, except in the case of oral evidence.

(c) In the case of oral evidence "Plaintiff's evidence" or "Defendant's evidence" should appear

beneath the name of the Court, and then the marginal note consisting of the number in the index and the witness's name with 'examination,' 'cross-examination' or 're-examination' as the case may be.

PART II.

The word "Exhibit" should first appear. The marginal note of the exhibit should then appear consisting of the exhibit mark and the description of the document in the index, with the date.

(6) *Omission of formal documents, etc.*—The parties should agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the index and in the record), if desired with the words "Not printed" against it.

A long series of documents, such as accounts, rent-rolls, inventories, etc., should not be printed in full, unless Council so advise, but the parties should agree to short extracts being printed as specimens.

Every document should be carefully edited for the printer, avoinding the repetition of unnecessary titles and omitting formal portions.

81. The charges for translation and copying shall be regulated by the rules dealing with the matters. It shall not be necessary to translate any papers which have already been translated.

82. All translations whether previously made or made for the purpose of the appeal to His Majesty in Council, shall be authenticated by the person by whom they were made.

83. The notices in India shall be limited, in the absence of any express direction by the Court, to the notice of application for this certificate of admission, notice declaring the appeal admitted and notice of the transmission of the record to England; and in all cases where a party has appeared, service on the advocate shall be deemed to be sufficient notice.

84. When the record is to be printed the style to be adopted shall be as follows:—

- (i) The form known as *demi quarto* (i.e., 54 cms in length and 42 in width) shall be followed.
- (ii) The size of the paper used shall be such that the sheet when folded and trimmed shall be 11 inches in length and 8½ inches in width.
- (iii) The type to be used in the text shall be *Pica* type, but *Longprimer* shall be used for printing accounts, tabular matters and notes.
- (iv) The number of lines in each page of *Pica* type shall be 47 or thereabouts and every tenth line shall be numbered in the margin.

85. When the record is printed in India, 100 copies of the transcript shall be struck off. Twenty copies shall be supplied to the party at whose cost the record is printed. Any other party to the suit shall be supplied with copies of the record on payment of the cost price. Copies so supplied shall not be certified. A charge of Re. 1 for every 750 words shall be made for proof reading. Money paid for proof reading shall be credited to Government.

86. When the transcript is ready, if it is to be printed in England, one certified copy shall be transmitted to the Registrar of His Majesty's Privy Council, Whitehall, at the expense of the appellant, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the Agents in England by or on behalf of the parties to the appeal.

87. When the transcript has been printed in India, and 100 copies struck off under rule 85, 40 copies shall be sent, at the expenses of the appellant, to the Registrar of His Majesty's Privy Council one of which shall be certified to be correct by the Deputy Registrar of the Court by his signing his name on, initialling

discretion, dispense with notice to any respondent against whom the suit was heard *ex parte*."

Rule 21.—In rule 21 of Order XLI, (a) the existing rule shall be re-numbered as sub-rule (1), and (b) after sub-rule (1) so re-numbered, the following shall be inserted as rule (2), namely:—

"(2) The provisions of section 5 of the Indian Limitation Act, IX of 1908, shall apply to application under sub-rule (1)."

ORDER XLV.

Rule 3.—For sub-rule (2) of rule 3 of Order XLV, the following sub-rules shall be substituted, namely:—

"(2) Upon receipt of such petition, the Court, after sending for the record, and after fixing a day for hearing the applicant or his pleader and hearing him accordingly if he appears on that day, may dismiss the petition."

"(3) Unless the Court dismisses the petition under sub-rule (2), it shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted."

Rule 7A.—After rule 7, insert the following new rule 7A:—

"7A.—No such security as is mentioned in rule 7 (1), clause (a), shall be required from the Secretary of State for India in Council, or, where the Local Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity."

NOTE.—Rule 7 has been omitted by the Government of India (Adaptation of Indian Laws) Order, 1937, and therefore this rule has become useless.

PART I.

DECREE AND ORDER.

SYNOPSIS.

- | | | |
|---|---|-------------------------------------|
| 1. Decree—Definition of. | } | 4. Order rejecting Memo. of appeal. |
| 2. Object of defining decree. | | 5. Order dismissing appeal. |
| 3. Essence of distinction between Decree and Order. | | 6. Other Orders. |
| | | |

To say in the language of Lord Atkinson,¹ the word “judgment” is indeed popularly used in many different senses, as when one says a certain man is a man of sound judgment, meaning that he is possessed of the intellectual faculty of deciding rightly on facts or circumstances, or where even in legal matters the expression of the opinion formed in a case by a judge who dissents from his colleagues is commonly called his judgment, though it can have no effect whatever on the determination of the suit or action in which it is delivered. In its strict legal and proper sense, a “judgment” is a decision obtained in an action. Every other decision is an order. To constitute an order a ‘final judgment,’ nothing more is necessary than that there should be a proper *litis contestatio* and a final adjudication between the parties to it on the merits. A “final judgment” in the strict and proper meaning of the words, is a judgment obtained in an action by which a previously existing liability of the defendant to the plaintiff is ascertained or established.

Legal judgments cannot be treated as mere counters in the game of litigation. They are serious pronouncements, for the most part of the judicial officer of the State, touching the rights of disputes of subjects, bringing home to those subjects what the rules of justice required and are enforceable, if need be, by

¹ In the case of *Tata Iron & Steel Co. v. Chief Revenue Authority, Bombay*, 50 I.A. 212.

the forces of the State. Moreover, when once pronounced, they cannot be lightly set aside. The Court has no jurisdiction after the judgment at the trial has been passed and entered to rehear the case. The only cases in which the Court can interfere after the passing and entering of the judgment are these: (1) where there has been accident or slip in the judgment as drawn up, and (2) where the Court itself finds that the judgment as drawn up does not correctly state what the Court actually decided and intended.²

It is the Court of appeal which can reverse or modify the judgment of the trial Court. But all adjudications of a Court of law are not appealable. Where an adjudication amounts to an order, no appeal lies from it unless it falls under any of those enumerated in the list of appealable orders given in sec. 104 or in the list of those given in Order 43 of the Civil Procedure Code. Where a decision amounts to a decree, an appeal shall lie from it unless it is otherwise expressly barred by any statutory provision. Both the terms "decree" and "order" have been defined in the Code of Civil Procedure, 1908, as follows:—

"Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

- (a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

Order. “Order” means the formal expression of any decision of a Civil Court which is not a decree.

**Object of
defining
‘decree.’**

The distinction between a “decree” and an “order” is more in effect than in form. Mulla in his famous commentary on the Code of Civil Procedure pointed out the distinction very nicely as follows: “The distinction is this—that while in the case of an adjudication which amounts to a decree the law permits a second appeal in some cases, no second appeal is allowed at all in the case of an adjudication which amounts to an appealable order. That is to say, if an appeal is preferred from a decree and a decree is passed in appeal, an appeal will in certain cases lie from the decree passed in appeal. But if an appeal is preferred from an appealable order and an order is passed in appeal, no appeal lies at all from the order passed in appeal.” The whole object of defining a “decree” in the Code appears to be to classify orders in order to determine whether an appeal or in certain cases a second appeal lies therefrom. Apart from that object this definition is of no value. It is not possible to reconcile either in principle or in theory why an order rejecting a plaint should stand on a different footing from orders of dismissal for default and yet one is a decree and the other is not. It is true that an order of rejection of a plaint has been expressly included in the definition of “decree.” The legislature has included it and no analogy can be drawn therefrom. The question whether an adjudication is an order or decree

is to be tested not by general principles but by the expressions of the Code and those words are to be construed in their plain and obvious sense; only such words of dismissal for default as are treated as such by the Code itself are excluded from the definition.³ The provisions relating to suits apply to appeals so far as such provisions are applicable. Hence a decision rejecting a memorandum of appeal on the ground that it is barred by limitation,⁴ or that it is insufficiently stamped,⁵ or that it was not duly presented,⁶ is appealable as a decree. But no appeal will lie from an order returning a memorandum of appeal to be presented to the proper Court, and also from an order returning it for amendment.

The essence of the distinction between a decree and order seems to be in the nature of the decision, whether it is an adjudication of a particular kind or not, rather than in the manner of its expression. Since the words "formal expression" appear in both the definitions [sec. 2 (2) and sec. 2 (14),] the presence or absence of a formal expression cannot be the true criterion of the difference between a decree and an order. The dismissal of an appeal under Or. 41, r. 11 (1), Civil Procedure Code, is a decree and appealable as such, whereas the dismissal of an appeal under Or. 41, r. 11 (2) is not. The dismissal under r. 11 (1) has, so far as the Court pronouncing it is concerned, the finality which is an essential ingredient of a decree as defined in sec. 2 (2); and in substance it expresses an adjudication, within that definition to the effect that the appeal is without merit. In dismissing an appeal under Or. 41, r. 11 (1), the appellate Court is not required by law to write a judgment, though it would be better to give reasons for the dismissal. Even if the

Distinction
between
Decree and
Order.

³ *Kalimuddin v. Esabuddin*, 51 Cal. 715 : 28 C.W.N. 795 : 39 C.L.J. 399 : A.I.R. 1924 Cal. 830.

⁴ *Gulab Rai v. Mangli Lal*, 7 All. 42 ; *Raghunath v. Nilu*, 9 Bom. 452 ; *Gunga v. Ramjoy*, 12 Cal. 30.

⁵ *Rup Singh v. Mukhraj*, 7 All. 887.

⁶ *Ayyanna v. Nagabhoosanam*, 6 Mad. 285.

appellate Court only says "Heard. The appeal is summarily dismissed," that is sufficient. The dismissal is none the less a decree open to second appeal, provided the other conditions are satisfied.⁷ It is in the nature of the order and not the stage at which it is passed that must determine its character as a decree within the meaning of sec. 2, Civil Procedure Code. An order dismissing an appeal as being time-barred before it has been admitted or registered is a decree.⁸

No appeal lies from an order unless it is enumerated in the list of appealable orders given in sec. 104 or in Or. 43, r. 1. An order under Or. 1, r. 10 (2) discharging a defendant from a suit cannot be regarded as falling within the definition of a "decree" and as such is not an appealable order. The mere drawing up a formal decree does not *ipso facto* make the corresponding order an appealable one, if it does not, in itself, really fall within the definition of a decree. An order refusing to pass a final decree in a mortgage suit on the ground that an appeal against the preliminary decree was pending in the High Court does not amount to a decree, final or preliminary.⁹ An order dismissing an application for a final decree in a mortgage suit is a decree and appealable as such.¹⁰ An order dismissing an appeal with costs on account of the appellant having withdrawn the appeal is a decree.¹¹ An order rejecting a memorandum of appeal for deficient court-fees is not a decree.¹² An order directing the removal of a party's name from the array of parties is in substance although, not in form a

⁷ Jamuna Prasad v. Rajballam, 1937 Pat. W. Notes, 340 : A.I.R. 1937 Pat. 349.

⁸ Sudhansu Bhusan v. Majho Bibi, 42 C.W.N. 72 : A.I.R. 1937 Cal. 732.

⁹ Ishwari Prasad v. Raghubans, 13 Pat. 379: 15 P.L.T. 205: A.I.R. 1934 Pat. 225.

¹⁰ Nathu Mal v. Ude Ram, 33 P.L.R. 56: A.I.R. 1932 Lah. 214.

¹¹ Jujisti v. Magata, 56 Mad. 520: 64 M.L.J. 695: 143 I.C. 412.

¹² Jnanadasundari v. Madhab Chandra, 59 Cal. 388: A.I.R. 1932 Cal. 482.

decree.¹³ An order permitting the withdrawal of a suit or appeal is not a decree.¹⁴ An order for security to stay execution is not an order determining any rights of the parties. It is neither an order under sec. 47, nor is it a "decree" within the meaning of sec. 2 (2), Civil Procedure Code.¹⁵ An order limiting the right of the decree-holder to recover mesne profits for a certain period is of the nature of a final decree and is appealable as such.¹⁶ An order declaring the defendants not liable for mesne profits, amounts to a decree and is appealable.¹⁷ An order under sec. 73 of the Civil Procedure Code is not an order under sec. 47 inasmuch as the question which arises is not one between the parties to the suit and the order rejecting the application under sec. 73 does otherwise come within the definition of decree in sec. 2 of the Code.¹⁸ An order accepting or refusing to accept the security to be sufficient is not appealable.¹⁹

¹³ *Shair Ali v. Jagmohan*, 53 All. 466.

¹⁴ *Kulandai v. Indram Ramaswami*, 51 Mad. 664: 55 M.L.J. 345.

¹⁵ *Charanji Lal v. Raja Ram*, 106 I.C. 890.

¹⁶ *Khatemannessa v. Upendra*, A.I.R. 1928 Cal. 804: 115 I.C. 591.

¹⁷ *Naimuddin v. Imani Mondal*, A.I.R. 1923 Cal. 308: 67 I.C. 93.

¹⁸ *Harmoozi v. Ayasha*, A.I.R. 1921 Pat. 401: *Dwarka Das v. Jadab Chandra*, 51 Cal. 761: 39 C.L.J. 439: 28 C.W.N. 704: 78 I.C. 731; *Shib Das v. Bulokimal*, 98 I.C. 884.

¹⁹ *Kishan Das v. Sat Narain*, 32 P.L.R. 806: A.I.R. 1932 Lah. 120.

PART II.

WHO MAY APPEAL.

SYNOPSIS.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Right of appeal must be given by statute. 2. Party adversely affected by finding may appeal. 3. Test to be applied is whether finding would be <i>res judicata</i> in future proceedings. | <ol style="list-style-type: none"> 4. Right of appeal where ground is common to all. 5. Appeal as against co-defendants. 6. Appeal where any appellant has died. 7. Where representative not brought on record. 8. Appeal from consent decree. |
|--|---|

The provisions as to appeals from original decrees have been laid down in section 96, and those as to appeals from orders have been made in section 104 and Or. 43, of the Civil Procedure Code. Section 100 deals with second or special appeals.

Appeal is a creature of statute.

“Appeal” is not defined in the Civil Procedure Code. Any application by a party to the appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptance of the term.

An appeal is a creature of the statute, and it cannot be assumed that there is a right of appeal in all matters coming for consideration of the Court. Unless a right of appeal is expressly given, it does not exist, and the litigant may have independently of any statute a right to institute a suit for nullifying the effect of any decision of a Court. An appeal does not exist in the nature of things; a right of appeal from any decision must be given by express enactment, and it cannot be implied.¹

Party adversely affected may appeal.

The right of appeal can be exercised only by those in whom the power is vested expressly or impliedly by

¹ Rangoon Botatoung Co. v. Collector, Rangoon, 39 I.A. 197; 40 Cal. 21; 16 C.W.N. 961; Har Chandra v. Bhola Nath, 39 C.W.N. 567; Rajagopala v. Endowments Board, 57 Mad. 271; Sandback Charity Trustees v. North Staffordshire Ry. Co., 3 Q.B.D. 1.

the statute. The Code of Civil Procedure, in the provisions relating to appeals, does not mention persons who may appeal. The High Courts in this country have held, apart from the provisions of the Code of Civil Procedure, that a party adversely affected by a decree may prefer an appeal from the decree; and that the question whether a party is adversely affected by a decree is a question of fact to be determined in each case according to its peculiar circumstances.

In the case of *Krishna Chandra Goldar v. Mohes Chandra Saha*,² it was held by Sir John Woodroffe, J., on a review of authorities, that a defendant had a right of appeal, notwithstanding that the suit had been dismissed as against him, if he was aggrieved by the decree. The decree sought to be assailed in the case was undisputedly one adjudicating the right of the defendant seeking to appeal, although it was a decree of dismissal of the suit. It was observed in the judgment that the question who may appeal was determinable by the common-sense consideration that there could be no appeal when there was nothing to appeal about, and that it was not because the suit was formally dismissed as against the defendant that no appeal lay, but because such dismissal was ordinarily not merely no grievance, but an actual benefit to the defendant. There was in such cases nothing to complain of; if there was, then notwithstanding that the suit was dismissed against him, he might appeal. In *Jumna Singh v. Kamaurnisa*,³ according to the opinion of a Full Bench of the Allahabad High Court, there was no appeal maintainable in the case before the Full Bench for the reason that the finding against which it was directed, would not bar the admissibility of the question, in a subsequent suit, and also on the ground that under the law it was inferrible that the parties who are allowed to appeal are those who may desire that a decree should be varied or reversed. The

Krishna
Chandra
v.
Mohes
Chandra.

Jumna Singh
v.
Kanaurnisa.

² 9 C.W.N. 584.

³ 3 All. 152 (F.B.).

majority of the learned Judges expressed the opinion that the finding sought to be challenged in appeal would not bar a suit by one against another for the establishment of the validity of the sale-deed in question, the finding between the plaintiff and the defendant in the suit, and not between the defendant vendor and the defendant's vendees, who were not then litigating would not bar an adjudication of the matter in issue between them, in a suit brought by the latter for the establishment of the validity of the sale-deed. In *Jamna Das v. Udey Ram*,⁴ it was held that an appeal could lie against a decree, even though it was not a decree against an appellant, if it implied a finding, but for which the decree could not have been given in favour of the plaintiffs in the case. In the case of *Nimmagadda Venkateswarlu v. Badapati Lingayya*,⁵ it was laid down that where a suit was dismissed, the true test for determination whether the defendant could appeal, was to see not merely the form but the substance of the decree and the judgment; and where the point decided adversely to the defendant, was directly and substantially in issue, and where in other proceedings, the matter would be *res judicata*, it would be contrary to all principles of justice and equity to hold that the defendant was precluded from agitating the matter on appeal, merely because the suit was dismissed.

Nimmagadda
v.
Badapati.

In the case of *Haran Chandra Das v. Bhola Nath Das*,⁶ it has been held that under the strict letter of the provision in the Civil Procedure Code relating to the right of appeal, no appeal lies by a party in whose favour a decree has been passed against a finding contained in the judgment. But on grounds of justice, it is justifiable and even necessary to read in the provision in the Code an implication in favour of suitable exceptions; and the rule in this respect which has been

Hara
Chandra
v.
Bhola Nath.

⁴ 21 All. 117.

⁵ 47 Mad. 633.

⁶ 62 Cal. 701: 39 C.W.N. 567.

engrafted on the statute by a current of judicial decisions and which it is right to follow, is that a party in whose favour a decree has been passed may, nevertheless, have a right to appeal against a finding adverse to him—the test to be applied in each particular case being whether the finding, sought to be appealed against, is one to which the rule of *res judicata* may be held to be applicable so as to disentitle the aggrieved party to agitate the question covered by the finding in any other proceeding. Guha and Bartley, JJ., observed in the judgment of the case: “.....it may be taken to be the view of Courts in India generally, that a party to the suit adversely affected by a finding contained in a judgment on which a decree is based, may appeal; and the test applied in some of the cases for the purpose of determining whether a party has been aggrieved or not was whether the finding would be *res judicata* in other proceedings. This rule permitting an appeal from a finding in a judgment in a case in which the decree is in favour of the party seeking to appeal is engrafted on the provisions in the Code of Civil Procedure bearing on the question of the right of appeal, on principles of justice and equity, and on the ground of common sense. The rule now practically adopted in this country has to be given effect to, on the assumption that it was not the intention of the legislature to prejudice the rights of parties; and it has to be determined in each particular case in which it is sought to be applied, whether the finding in a judgment against a party decided adversely to him, was on a point directly and substantially in issue, and whether the rule of *res judicata* would be a bar in the matter of parties being allowed to re-agitate the question involved in the finding, in other proceedings. It may be taken to be well settled that to constitute a matter directly and substantially in issue it is not necessary that a distinct issue should have been raised upon it; it is considered sufficient if the matter was in issue in substance. Further, an issue is *res judicata* when the judgment of the appellate Court shows that the issue

Party
aggrieved if
adverse
finding
would be
res judicata
in future
proceedings.

Midnapore
Zamindary
Company
v.
Naresh
Narayan.

was treated as material, and was decided, although the decree passed merely affirms the decree of the trial Court which did not deal with the issue [*see* the judgment of this Court quoted *in extenso* and adopted by the Judicial Committee in *Midnapore Zemindary Company v. Naresh Chandra Roy*⁷]. The question also has to be considered, whether in view of the position that it is not enough to constitute a matter *res judicata* that it was in issue in the former suit; it is necessary that it must have been in issue directly and substantially; and a matter cannot be directly and substantially in issue in a suit, unless it was alleged by one party and denied or admitted either expressly or by necessary implication, by the other."

Tarapada
v.
Sakhi Kanta.

The case of *Hara Chandra Das v. Bhola Nath Das*⁸ was followed in *Tarapada Ghose v. Sakhi Kanta Behara*.⁹

Where
Decree
proceeds on
any common
ground.

Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be. [Or. 41, r. 4]. When the decision of the trial Court has proceeded on a ground common to all the plaintiffs or to all the defendants, it is competent to any one of them to challenge the decision in appeal by him even if the other plaintiffs or the defendants are not parties thereto. Although only some of the defendants appeal, the other non-appealing defendants are entitled to take advantage of any decision which has been arrived at in favour of the non-appealing defendants.¹⁰ Mulla in his famous com-

⁷ 51 I.A. 293: 51 Cal. 631: 29 C.W.N. 34.

⁸ 62 Cal. 701: 39 C.W.N. 567.

⁹ 42 C.W.N. 492.

¹⁰ *Maharaja Bir Bikram v. Tafazzal Hossain*, 60 Cal. 733: 37 C.W.N. 504: A.I.R. 1933 Cal. 632: 146 I.C. 671.

mentary on the Code of Civil Procedure has dealt with the point at length which is as follows:—

“This rule (Or. 41, r. 4) provides that where there are more defendants than one, and the decree appealed from proceeds on any ground common to all the defendants, any one of the defendants may appeal from the whole decree, and thereupon the appellate Court may reverse or vary the decree in favour of all the defendants.¹¹ It is not necessary for the application of this rule that the decree should proceed on *every* ground common to all the plaintiffs or to all the defendants; it is quite sufficient if it proceeds on *any* ground common to all the plaintiffs or to all the defendants. But the provisions of this rule do not apply, unless the lower Court whose decree is appealed from has proceeded upon some ground common to all the plaintiffs, or all the defendants.¹² If the lower Court has not proceeded upon any such ground, it is not competent to the appellate Court to reverse the decree as to all the plaintiffs or all the defendants upon a ground which the appellate Court considers to be common to all the plaintiffs or all the defendants.”

“It sometimes happens, where there are two or more defendants, that although a suit is dismissed as against one of them, in other words, the decree on the face of it is entirely in his favour, the decree impliedly negatives the right claimed by such defendant as against the plaintiff and the other defendants. In such a case it has been held that an appeal will lie at the instance of such defendant on the ground that he is adversely affected by the decree. X owes Rs. 2,000 to A. A assigns the debt first to B and then to C. C sues A and B to recover the debt, alleging that the assignment to B had become void through non-fulfilment of the conditions upon which it was made. A

¹¹ Somasundara v. Vaithilinga, 40 Mad. 846.

¹² Ram Kamal v. Ahmed Ali, 30 Cal. 429; Ambika v. Pardip, 19 C.W.N. 233; Dhulatoor v. Paidigantam, 30 Mad. 470.

decree is passed against A, but the suit is dismissed as against B. Here the decree necessarily implies the finding that the assignment to B had become void, inasmuch as but for such a finding the decree could not have been passed in favour of C who admittedly was the second assignee of the debt. B may, therefore, appeal from the decree, though as against him the suit was dismissed.¹³

Appeal
against co-
defendant.

In some cases an appeal may be preferred by a defendant against the co-defendants.....The rule is that when a Court deals with a case as raising not only a question between the plaintiff and the defendants, but also as between the defendants, one of the defendants can appeal from the decree as between himself and the other defendants."¹⁴

It is open to co-defendants putting up a joint defence to resist the claim of a rival on any ground which they may be able to prove; and it is open to them to raise alternative and even inconsistent pleas in defence to the suit. And when there is no point in controversy between the co-defendants *inter se*, and no difference between them on any point, a finding by the Court on a point in favour of one of them and adverse to the other, cannot operate as *res judicata* in a subsequent suit between them. If all that the co-defendants in the prior suit are anxious about is to defeat the claim of the plaintiff, it does not matter to them whether the claim of any one of them is defeated on any ground. The decree which in any way non-suits the plaintiff is for the benefit of both of them, and the mere mention in the judgment that the claim of one of them is dismissed, does not affect his rights as against the other, and cannot operate as *res judicata*. Consequently such defendant cannot appeal against his co-defendant.¹⁵

To illustrate the point further some case-laws are given. Though a decree against several defendants

¹³ *Jamna Das v. Udey Ram*, 21 All. 117; *Krishna v. Mohesh*, 9 C.W.N. 584; *Yusuf v. Durga*, 30 Mad. 447.

¹⁴ *Soiru v. Narayanrao*, 18 Bom. 520.

¹⁵ *Ganpat v. Bhagwat*, 1937 A.W.R. 805.

which proceeds upon a ground common to them all can be set aside on appeal at the instance of one of them, it cannot be set aside when the appealing defendant values the appeal for a sum representing the amount decreed against him alone. Such an appeal is not one against the entire decree at all.¹⁶ The sister and sister's daughter of a deceased Hindu brought a suit against the alienee from the widow of the deceased to recover possession of certain property on the footing that they were the heirs of the deceased. The suit was dismissed and thereupon the sister's daughter alone appealed. The appellate Court dismissed her appeal but held that the sister was the heir and granted a decree in her favour even though she had not appealed. It was held that the rights of the sister and sister's daughter were not identical, and that the judgment of the trial Court not having proceeded upon a common ground, the provisions of Or. 41, r. 4 were inapplicable.¹⁷

In the case of *Satulal Bhattacharjee v. Asiraddi Sheik*,¹⁸ the suit was brought by the plaintiffs for a declaration of their title to certain lands and for recovery of *khas* possession in respect of the same. The trial Court granted a declaration of the plaintiff's title to a fractional share in the lands in suit but dismissed the prayer for *khas* possession. On appeal, the lower appellate Court set aside that decision and decreed the plaintiff's suit in full. Defendant No. 1 died during the pendency of the appeal in the lower appellate Court and his two sons were substituted as his heirs in the record of the appeal. A second appeal was preferred on behalf of both the sons. One of the sons died during the pendency of the second appeal and his heirs were not brought on the record within the time allowed by law. It was held that the whole appeal did not

Satulal
v.
Asimaddi.

¹⁶ *Jogendra Nath v. Rajendra Nath*, 63 I.C. 95.

¹⁷ *Jang Bir v. Mt. Jamna*, 12 Lah. 534: 32 P.L.R. 798: 135 I.C. 593.

¹⁸ 61 Cal. 879: 59 C.L.J. 362: 38 C.W.N. 743: A.I.R. 1934 Cal. 703.

abate, and the case was governed by the provisions of Or. 41, r. 4, which enables one of the two heirs of the defendant to maintain the appeal from the whole decree. Mitter, J., observed in the judgment: "The view we take has been taken by Mr. Justice Mukerji in an unreported decision of this Court. It was cited before the learned Judge of this Court; [in the case of *Karimannessa Bibi v. Jusan Mandal* in second appeal No. 1961 of 1930]. This view receives support also of a decision in the case of *Somasundaram Chettiar v. Vaithilinga Mudaliar* (40 Mad. 846). Sir John Wallis, at page 868 of the report, observes as follows: "The twentieth and twenty-second defendants died after the appeal had been preferred and their representatives have not been brought on the record. It has been argued that as the appeal has abated as regards these appellants, the decree of the lower Court cannot be modified as far as their interests are concerned. The grounds of appeal in which the appellants have succeeded are common to all the appellants and we think the terms of Or. 41, r. 4 of the Code of Civil Procedure are wide enough to cover this case, *Chintaman v. Gangabai* (27 Bom. 284) and enables this Court to set aside the decree as regards the whole of the plaintiffs' claim and not merely in respect of the interest of those appellants whose appeals have not abated. Any other conclusion would lead to 'incongruity in judicial decisions on the same facts', *vide Dhuttaloor Subbaya v. Paidigantam Subbaya* (30 Mad. 470)."

Where a suit is brought for setting aside the election of certain persons to a Municipal Board joining the Municipal Board as a defendant, and such persons and the Board put forward the same defence and the suit is decreed against all the defendants on a common ground, one of such persons can maintain an appeal without making the Municipal Board a party.¹⁹ Where out of four defendants constituting a partner-

¹⁹ Gopesh Chandra v. Benode Lal, 40 C.W.N. 553.

ship only three appealed against the decree which was for a sum of money alleged to have been lent to the partnership and one of the appellants died during the pendency of the appeal and his legal representative was the non-appealing defendant who was not brought on the record, it was held that Or. 41, r. 4 would enable the Court to grant relief to the appellants, in view of the fact that taking of accounts was not necessary in the case.²⁰ The plaintiff brought a suit for a declaration that the particular land in dispute situate in village Naya Bans, in the Delhi Province, was partible in proportion to holdings and not according to ancestral shares. The suit was dismissed and the plaintiff appealed. The lower appellate Court without going into the merits of the appeal dismissed it on the ground that some of the plaintiffs who were necessary parties had not authorised the appeal and were not parties to it owing to certain defects in the *vakalatnamah*. The plaintiffs thereupon preferred a second appeal. During the pendency of the second appeal one of the plaintiffs died and the application by his widow to bring the representative on record was not made within the period of limitation but was admitted subject to all just exceptions and this matter was left to be considered at the hearing of the appeal. It was held that the decree appealed from proceeded on ground common to all the plaintiffs and the appeal did not abate even though the representative of the deceased appellant was not brought on record in time.²¹ It is quite competent for one of several tenants to institute a suit under sec. 104-H of the Bengal Tenancy Act for the purpose of getting a declaration that he was an occupancy *raiyat* and that the entry in the record of rights that he was a tenure-holder was wrong. Consequently, the failure to implead in time the legal representative of one of the plaintiffs-respondents in time

²⁰ Chengamma Naidu v. Gangulu Naidu, A.I.R. 1925 Mad. 235.

²¹ Ram Kishan v. Bhim Singh, 149 I.C. 527; A.I.R. 1933 Lah. 933.

does not have the effect of rendering the entire appeal bad.²² A deed of sale purported to transfer the entire property jointly in favour of all the vendees for one consolidated amount. There was no specification of different interests of the various vendees in the sale deed. The trial Court also treated the purchase as a joint one and passed one joint decree for pre-emption against all the vendees. One of the vendees died during the pendency of the appeal and his legal representative was not brought on record. It was held that the mere fact that one of the vendees had dropped out, would not prevent the other vendees from prosecuting their appeal, because they were interested in the entire property transferred and were entitled to press their appeal against the plaintiff on a ground common to all the vendees and that the appeal did not abate as a whole.²³ The use of the word "may" in Or. 41, r. 4 shows that the appellate Court has been given a discretion in the matter. Where some of the parties have not appealed, the Court may refuse them relief.²⁴ But discretion must be exercised according to common-sense and according to justice. As Willes, J., said in *Lee v. Bude, etc. Ry.*,²⁵ if it is intended by the Legislature that a discretion should be exercised, what is meant is "a judicial discretion regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet."

*Lee v.
Bude.*

Appeal
from con-
sent decree.

No decree passed by consent of parties is appealable. Where the parties to a suit agree and say that the determination of their disputes by a third person is to be final between them, it is to be regarded as an undertaking not to appeal. A decree passed is

²² *Krishnabandhu v. Brajendrakumar*, 58 Cal. 1341: A.I.R. 1932 Cal. 134.

²³ *Jamuna v. Oudh Behari*, 146 I.C. 511: 1933 A.L.J. 1049: A.I.R. 1933 All. 733.

²⁴ *Kaka v. Kartara*, 32 P.L.R. 787: A.I.R. 1932 Lah. 71.

²⁵ (1871) L.R. 6 C.P. 576: 40 L.J.C.P. 285.

still a decree passed by consent, when the Court finds that there was a compromise, whether the compromise is admitted by both the parties or disputed by one of them; and the parties are estopped from impugning the decree made in accordance with the finding of the third person by whose decision they have agreed to be bound.²⁶ Where a compromise has been recorded and it has not been challenged in any way in the lower Court, the recording of the compromise must be held to have been done by consent and sec. 96 (3) read with sec. 108 of the Civil Procedure Code would bar an appeal against the order.²⁷ Where the parties give their consent to the Court as to the procedure which the Court is to adopt in the matter of coming to a decision on the merits of a case and they also give their consent that such a decision will be binding on them, it is tantamount to saying that the decision will be final and no right of appeal will be exercised by the parties. The parties cannot resile from the agreement and an appeal will be incompetent. Sec. 28 of the Contract Act does not apply to the case and it is not necessary that the agreement should be considered to be an adjustment within the meaning of Or. 23, or that the effect of the agreement should be to constitute the Court an arbitrator in the controversy.²⁸ But where the dispute is over the nature of a compromise, the appellant has a right in appeal to show what the compromise was.²⁹ The Court has jurisdiction to set aside an order made by consent which is not in the nature of a final order or judgment but which is merely an interlocutory order in the suit, provided proper

²⁶ *Mahomed Mia v. Osman Ali*, 62 Cal. 229: 60 C.L.J. 173: A.I.R. 1935 Cal. 239; *Sabitri v. Savi*, 12 Pat. 359: 14 P.L.T. (Supp.) 1: A.I.R. 1933 Pat. 306; *Shahzadi v. Ibrahim*, 43 All. 266.

²⁷ *Onkar v. Gaman Lakhaji*, 57 Bom. 206: 35 Bom.L.R. 127: 144 I.C. 448.

²⁸ *Bashir Ahmed v. Sadiq Ali*, 6 O.W.N. 771: 120 I.C. 826.

²⁹ *Dwarka Nath v. Atul Chandra*, 46 C.L.J. 353: A.I.R. 1928 Cal. 108.

grounds are made out.³⁰ An order passed by consent given by the pleader under a mistake of fact cannot be set aside unless grave injustice is likely to happen otherwise.³¹

An appeal may be preferred by any party to the suit adversely affected by the decree,³² or, if such party is dead, by his legal representative;³³ by any transferee of the interest of such party, who, so far as such interest is concerned, is bound by the decree, provided his name is entered on the record of the suit;³⁴ by an auction-purchaser from an order in execution setting aside the sale on the ground of fraud.³⁵

³⁰ *Yusuf v. Abdullabhoy*, 32 Bom.L.R. 667: A.I.R. 1930 Bom. 362.

³¹ *Jamnabai v. Fazalbhoy*, 26 Bom.L.R. 189: 40 C.L.J. 272: 77 I.C. 355.

³² *Krishna v. Mohesh*, 9 C.W.N. 584.

³³ *Gajadhar v. Ganesh*, 7 B.L.R. 149.

³⁴ *Moreswar v. Kushaba*, 2 Bom. 248.

³⁵ *Rustomji v. Official Liquidator*, 1919 Punj. Rec. No. 79, at page 196.

PART III.

SECOND APPEAL

SYNOPSIS.

- | | |
|--|---|
| 1. No second appeal from finding of fact. | and should be clear and definite. |
| 2. Erroneous finding of fact is different from error or defect in procedure. | 7. Proper legal effect of proved fact. |
| 3. Construction of document. | 8. Error of fact. |
| 4. Finding based upon evidence. | 9. Finding vitiated by error of law. |
| 5. Finding based on no evidence. | 10. Finding as to <i>bona fide</i> conduct. |
| 6. Finding to be arrived at after due circumspection | 11. Decision contrary to law. |
| | 12. Question of law and fact. |

Sec. 100 of the Civil Procedure Code deals with appeals from appellate decrees. It runs thus:—

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely:—

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being

in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

A second appeal can lie only to the High Court on one or other of the grounds specified in section 100. No second appeal will lie on the ground of an erroneous finding of fact. The High Court cannot interfere with the findings of fact unless those findings have been based upon a misconception of the evidence or upon some mistake which has arisen in the consideration of that evidence in the lower Court.¹ Under sec. 100 of the Civil Procedure Code the High Court has no jurisdiction to reverse the findings of fact arrived at by the lower appellate Court, however erroneous, unless they are vitiated by some error of law.²

No second
appeal from
finding of
fact.

A finding of fact of the lower appellate Court is ordinarily binding in second appeal; but where the lower appellate Court has not applied its mind to the evidence in the case in a judicial manner and omits to take into consideration an important piece of evidence and thereby comes to a wrong conclusion, the High Court not only may, but must, interfere in the interests of justice.³ Where a very important piece of documentary evidence is ignored and left out of consideration by the judge, the finding of fact may be said to be vitiated on that ground, and it is open to the High Court to interfere in second appeal.⁴

¹ Shobharani v. Santosh Kumar, 61 Cal. 365: 152 I.C. 597: A.I.R. 1934 Cal. 633.

² Secy. of State v. Rameswaram, 38 C.W.N. 533 (P.C.).

³ Ram Shankar v. Ram Manorath, 1935 O.W.N. 11: 153 I.C. 373.

⁴ Gajindra v. Chhajju, 32 P.L.R. 714: 135 I.C. 43.

An erroneous finding of fact is a different thing from an error or defect in procedure and there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact however gross or inexcusable the error may seem to be.⁵ Unless it can be shown that the first appellate Court has misdirected itself in point of law in dealing with the question of fact upon the evidence in the case, there would be no ground for a second appeal from its decision upon the question of fact.⁶ If the finding is so based on an erroneous proposition of law that if the proposition be corrected the finding disappears, then in that case there is no finding at all.⁷ In a second appeal the High Court is not entitled to go behind the findings of the lower appellate Court unless such findings result from the misconstruction of a document of title or the misapplication of law or procedure.⁸ A finding of fact cannot be challenged in second appeal unless it is shown that it is not justified by the evidence in the case.⁹ A finding of fact arrived at upon an erroneous conjecture as to matters not on record can be interfered with in second appeal.¹⁰

Erroneous finding of fact is different from error or defect in procedure.

Now let us see what are findings of fact. The question of what weight has to be attached to documents admitted and proved is a question of fact and cannot be gone into second appeal.¹¹ Where the question is whether two documents executed on the

⁵ *Mahipati v. Secy. of State*, 56 I.A. 223: 52 Mad. 538: 57 M.L.J. 64: 33 C.W.N. 725: A.I.R. 1929 P.C. 152; *Ramji Patel v. Kishore Singh*, 56 I.A. 280: 31 Bom.L.R. 883: 33 C.W.N. 893: 50 C.L.J. 197: 57 M.L.J. 205: 117 I.C. 1: A.I.R. 1929 P.C. 190.

⁶ *Midnapore Zamindary Co. v. Uma Charan*, 29 C.W.N. 131: 40 C.L.J. 16: 74 I.C. 482: A.I.R. 1923 P.C. 187.

⁷ *Jang Bahadur v. Kanhialal*, 112 I.C. 166.

⁸ *Tarni Singh v. Satnarain*, 6 P.L.T. 787: A.I.R. 1926 Pat. 9.

⁹ *Secy. of State v. Labha Ram*, 16 Lah. 1060: 38 P.L.R. 113: 156 I.C. 1028: A.I.R. 1935 Lah. 389; *Qamar Jahan v. Dwarka Nath*, 147 I.C. 871; *Jinnatennessa v. Abdul Halim*, A.I.R. 1925 Cal. 469: 82 I.C. 822.

¹⁰ *Kishan Singh v. Lachhman*, 122 I.C. 109: A.I.R. 1930 Lah. 238.

¹¹ *Rasik Lal v. Prasanna Kumar*, 60 C.L.J. 569: A.I.R. 1935 Cal. 367.

Findings of
fact—what
are.

same day are so connected that one is consideration for the other, the question is not one of interpretation of documents, and if the lower Courts ascertain their connection on evidence other than that of the documents themselves, the finding is a finding of fact which cannot be challenged in second appeal.¹² The conclusions on evidence, partly documentary, are as much binding in second appeal, as conclusions on oral evidence.¹³ The question of adoption is clearly a finding of fact.¹⁴ The question whether the three brothers were joint or separate, no doubt would ordinarily be a question of fact but if in coming to a finding, certain documents relied upon by the defendants as evidence of partition are illegally excluded from evidence on the ground that they are not admissible, the finding can be challenged in second appeal.¹⁵ Whether or not a party had been in possession of certain land within twelve years of the suit, so as to resist a plea of adverse possession, is a question of fact.¹⁶ A finding on the question whether possession is adverse or permissive is one of fact and cannot be challenged in second appeal.¹⁷ The question whether a person had been in possession, actual or constructive, of the disputed land, is a pure question of fact.¹⁸ The question whether the land was ancestral or not is one of fact.¹⁹

The question of the construction of a certain document is a question of law but the question what legal inference may be drawn from a number of

¹² *Sarju Singh v. Shyam Sunder*, 153 I.C. 674.

¹³ *Shamsuddin v. Suresh Chandra*, 61 C.L.J. 369: 39 C.W.N. 1270: A.I.R. 1936 Cal. 22.

¹⁴ *Hari Ram v. Sali*, 154 I.C. 675: A.I.R. 1934 Lah. 968; *Gurdev v. Narajan*, 157 I.C. 865.

¹⁵ *Jasoda Kuer v. Punit Singh*, A.I.R. 1934 Pat. 48.

¹⁶ *Lal Chand v. Allah*, I.R. 1932 Lah. 628.

¹⁷ *Kallu Mal v. Maman*, 14 Lah. 302: 22 P.L.R. 494: 135 I.C. 680.

¹⁸ *Alopi v. Gajadhar*, 130 I.C. 296: A.I.R. 1931 All. 323.

¹⁹ *Gurdial v. Bhagat*, 35 P.L.R. 532: 153 I.C. 241: A.I.R. 1934 Lah. 517; *Chirag Din v. Mehtar*, 15 Lah. 645: 36 P.L.R. 315: A.I.R. 1934 Lah. 274; *Mahomed Alam v. Hafizan*, 15 Lah. 791: A.I.R. 1934 Lah. 351.

documents is a question of fact and not a mere question of law.²⁰ If a finding of the Court of first appeal is based upon the construction of instruments of title, or of contracts, statutes or any other documents which may be direct foundation of rights, the Court's view of the legal effects of such documents is open to question in second appeal. If, however, the lower appellate Court has simply to consider the history of the case by collecting together and putting them in their chronological order, sale-deeds, mortgage-deeds and such other documents and all these are mere pieces of evidence involving no question of construction, then the inference which the Court draws from such documents is a fact which cannot be upset in second appeal.²¹ But a finding of fact is not binding in second appeal if the lower appellate Court has not correctly interpreted some of the documents on which the parties rest their title and has based its decision on a plea that does not arise in the case.²² The determination of the intention of the parties is a question of fact but if the sole evidence to decide it is a document of title, then a wrong interpretation of that document is a question of law on which a second appeal lies.²³

Construction
of document.

The question of the existence or non-existence of a custom is substantially a question of fact and the finding would ordinarily be binding on the High Court in second appeal. Of course if the Court below has approached the question from a wrong standpoint or has thrown the burden of proof on the wrong party or had wrongly assumed a condition to be necessary which is not required, the finding may be vitiated. Similarly, if it has acted on illegal evidence or acted upon evidence which is legally insufficient to show that the custom is

Custom.

²⁰ *Rasul Ali v. Bal Kishun*, 153 I.C. 362: A.I.R. 1934 All. 709.

²¹ *Sheonarayan v. Dindayal*, 134 I.C. 673: A.I.R. 1931 Nag. 189.

²² *Abadi v. Mumtazuddin*, 35 P.L.R. 578: 153 I.C. 393: A.I.R. 1931 Lah. 662.

²³ *Kanshi Nath v. Chakar Dhar*, 36 P.L.R. 98: 149 I.C. 1016.

general and of universal application, the finding may be interfered with; or if in any other way a proposition of law is mixed up with the finding, the latter may become a mixed question of fact and law.²⁴ A finding by the lower appellate Court, that no instances are proved in which an alleged custom has been exercised or recognised, is a finding of fact and is binding in second appeal if it is not vitiated by any error of law. But where the lower appellate Court holds that certain instances in which the alleged custom had been followed or recognised had been proved, but that such instances were not numerous, or ancient, or uniform enough to constitute a custom following the ordinary law, a question of law arises in second appeal, and the High Court would be right in weighing the whole evidence to see if the lower appellate Court had rightly decided the point.²⁵ The existence of a custom or usage having the force of law is a mixed question of fact and law.²⁶

Finding
based upon
evidence.

The preponderance of judicial opinion establishes the proposition that a finding as to the existence or non-existence of a custom in so far as it is a finding that a certain practice does or does not prevail is a finding of fact. The question whether a prevailing practice has the essential attributes of a legally binding custom is a question of law.²⁷ The question of the sufficiency or insufficiency of evidence to establish a custom is not a question which can be gone into by the High Court in second appeal. The weight or value to be attached to particular evidence and the question whether the quantum of evidence before the Court is or is not sufficient to establish a custom are

²⁴ *Ram Saran v. Peary Lal*, 53 All. 308: A.I.R. 1931 All. 104; *Tirkha Ram v. Murari Lal*, 1935 A.W.R. 735: 158 I.C. 109; *Sivaramakrishna v. Krishnan*, 37 L.W. 272: 143 I.C. 880.

²⁵ *Nathwa v. Raghubans*, 150 I.C. 758: 1934 A.L.J. 879: A.I.R. 1934 All. 890.

²⁶ *Sivaramakrishnan v. Krishnan*, 37 L.W. 272: A.I.R. 1933 Mad. 390.

²⁷ *Municipal Board, Benares v. Kandhiya Lal*, 54 All. 6.

matters entirely within the province of the lower appellate Court.²⁸

A finding based on no evidence is not binding in second appeal.²⁹ A finding of fact which is vitiated by being based upon inadmissible evidence is not such a finding as is binding upon the second appellate Court.³⁰ Where the judgment of the Court below is not satisfactory and the Court has not come to a finding on a consideration of the whole evidence on the point, the case should be remanded for a re-hearing.³¹

The misconstruction of a document, which is only a piece of documentary evidence, does not raise a question of law.³² The misreading or ignoring of important documentary evidence amounts to a substantial error or defect in the procedure within the meaning of Sec. 100 (1) (c) of the Civil Procedure Code, and justifies the High Court in reversing the finding if such a course is justified on the merits.³³

A finding that an alienation by a Hindu widow is justified by legal necessity is a finding of fact.³⁴ But such a finding can be challenged in second appeal when there is no evidence to support it or when it proceeds

Alienation
by Hindu
widow.

²⁸ *Shyama Kumar v. Sat Narain*, 1935 O.W.N. 928: A.I.R. 1935 Oudh 459.

²⁹ *Kundan Lal v. Beni Pershad*, 13 Lah. 399; 32 P.L.R. 861: 137 I.C. 115; *Zahida Begum v. Mumtaz Ali*, 8 O.W.N. 921: A.I.R. 1931 Oudh 382; *Gopi Krishna v. Surendra Nath*, 60 C.L.J. 288: A.I.R. 1935 Cal. 210; *Annada Charan v. Jhatu Charan*, A.I.R. 1935 Cal. 648; *Damodaram v. Achuthan*, 1935 M.W.N. 193: 68 M.L.J. 648; *Secy. of State v. Labha Ram*, 16 Lah. 1060.

³⁰ *Kanta Mohan v. Makhan*, 39 C.W.N. 277; *Ibrahim v. Aziman*, 1935 O.W.N. 1388: A.I.R. 1936 Oudh 192; *Latafat v. Onkar Mal*, 10 Luck. 423: 11 O.W.N. 1589: 152 I.C. 1042; *Puran v. Suchita*, 35 P.L.R. 360: 148 I.C. 1058.

³¹ *Isap Ali v. Satish*, 65 I.C. 504.

³² *Atul Chandra v. Saroda Sundari*, 39 C.W.N. 581: 61 C.L.J. 143: A.I.R. 1936 Cal. 49; *Jogesh Chandra v. Sachchanda*, 60 C.L.J. 412: A.I.R. 1935 Cal. 282: 155 I.C. 833.

³³ *Municipal Board, Benares v. Kandhiya Lal*, 54 All. 6.

³⁴ *Basudeo v. Baidyanath*, A.I.R. 1935 Pat. 175.

Finding to be arrived at after due circumspection and should be clear and definite.

on erroneous principles of law.³⁵ While findings of fact cannot be questioned, the soundness of conclusions drawn from facts may involve matters of law and may be questioned in second appeal. A party to an appeal is entitled to claim a clear, definite and specific finding on every issue of fact raised in the case, and if the finding is vague, indefinite or ambiguous, it is but right to insist on such a finding being given or to send an issue back in order that the question of fact might be determined on the evidence adduced in a manner not open to misconstruction or doubt. The finality given by law to a finding of fact, arrived at by the lower appellate Court, renders it necessary that the finding should be arrived at after due circumspection and be expressed in clear and definite terms.³⁶ But where the lower Court has dealt with all the essential points in deciding the case and has also analysed the evidence and the main findings are warranted by the evidence on record, the Court of second appeal will not disturb his findings though they may be wrong.³⁷ In the case of *Ahmad Hasain v. Mt. Umrao Fatima*,³⁸ Daniels, J.C., observed that it is to the public interest that there should be an end of litigation even at the cost of occasional error. If this rule is strictly enforced the parties know where they are, but if a High Court, every time it differs from the view of the Court below on a question of fact, is to seek out flimsy pretexts for treating the question as one of law, the whole policy of the law will be defeated. The parties will be encouraged to file second appeals on questions of fact on the ground that evidence has been ignored, that sufficient weight has not been given to a particular document, or to an entry in patwari's papers and so forth.

³⁵ *Ralla Ram v. Atma Ram*, 14 Lah. 584; A.I.R. 1933 Lah. 343.

³⁶ *Channu Dutta v. Swamy Gyannandji*, 90 I.C. 976.

³⁷ *Saraswati v. Cado*, 78 I.C. 887.

³⁸ 64 I.C. 223.

The proper legal effect of a proved fact is a question of law.³⁹ Where inference is drawn from a number of facts in the case and the question does not involve any wrong application of legal principles, the finding as to malice is a question of fact. The findings of the lower appellate Court in a suit for malicious prosecution that the prosecution was launched without reasonable and probable cause and that it was maliciously false are findings of fact and cannot be gone into in second appeal.⁴⁰ But the High Court is entitled to examine whether the inference drawn therefrom is legitimate, or in other words, whether the facts found did, or did not, amount to absence of reasonable and probable cause.⁴¹

Proper legal effect of proved fact is question of law.

Inferences drawn from statements in the *khatian* are inferences of fact with which a High Court cannot interfere in second appeal, and the failure of the lower Court to raise a presumption will not amount to a misdirection.⁴² It cannot be said as a matter of law that no inference can be drawn from the fact that rent was never paid at the rate mentioned in the *kabuliyat* but at a lower rate, that the parties never meant to act upon the *kabuliyat* from the beginning. Such an inference drawn by the lower appellate Court is one of fact, based on admissible evidence, and is not open to challenge in second appeal. In the case of *Satyendra Nath Roy Chowdhury v. Pramananda Haldar*,⁴³ Mitter, J., observed: "With regard to his second contention I hold that it cannot be said as a matter of law that no inference can be drawn from the fact, that rent was never realised at the *kabuliyat*

³⁹ *Ram Sarup v. Abdul Haq*, 12 Lah. 741: 33 P.L.R. 139: A.I.R. 1931 Lah. 395.

⁴⁰ *Municipality of Ahmedabad v. Panubhai*, 37 Bom.L.R. 468: A.I.R. 1935 Bom. 355.

⁴¹ *Sale Khan v. Piare Lal*, 17 Lah. 190: 38 P.L.R. 440: A.I.R. 1935 Lah. 765.

⁴² *Anup Mahto v. Mita Dusadh*, 61 I.A. 93: 13 Pat. 254: 15 P.L.T. 115: 38 C.W.N. 365: 59 C.L.J. 147: 147 I.C. 977: A.I.R. 1934 P.C. 5.

⁴³ 39 C.W.N. 888.

Beni
Madhab's
case, 6
C.W.N.
242.

rate but at a lower rate, that the parties never meant to act upon the *kabuliyat* from the beginning. From such facts such an inference was drawn in *Beni Madhab's case*⁴⁴ and such a fact was held relevant in *Kailash Chandra's case*.⁴⁵ The inference drawn by the Court of appeal is in my judgment an inference of fact, based on admissible evidence and is not open to challenge in second appeal. The case of *Sheik Isab v. Guru Charan Shaha*⁴⁶ is distinguishable. In that case (which was a suit for recovery of arrears of rent) the defendant denied the relationship of landlord and tenant between him and the plaintiff. Such relationship was sought to be established by the plaintiff by proving a *kabuliyat*. The defence was that the *kabuliyat* was not acted upon as no rent had ever been realised according to the rate fixed in the *kabuliyat*. The lower appellate Court had found that the *kabuliyat* had been acted upon. This finding was based upon cogent proof. This finding was sought to be re-opened by the defendant-appellant in second appeal. The learned Judges held that this finding was sufficient to dispose of the appeal. In the face of the said findings the learned Judges repelled the contention of the defendant-appellant by observing that the mere fact that rent had not been paid according to the rate mentioned in the *kabuliyat* would not necessarily lead to the inference that the *kabuliyat* was never meant to be acted upon. A Court of fact would no doubt be at liberty to hold that realisation by the landlord at a lower rate was an act of grace or indulgence shown to the tenant, but when the last Court of fact does not draw the last-mentioned inference but draws the other inference from the said fact that the *kabuliyat* was not intended to be acted upon from the very first, I do not see how in second appeal this Court can say that the inference so drawn is in point of law erroneous."

⁴⁴ 6 C.W.N. 242.

⁴⁵ 20 C.W.N. 347.

⁴⁶ 49 C.L.J. 372.

In the case of *The Secretary of State for India in Council v. The Rameswaram Devasthanam*,⁴⁷ Sir John Wallis observed: "The question is mainly one of fact, and it is well settled that under sec. 100 of the Code of Civil Procedure the High Court has no jurisdiction to reverse the findings of fact arrived at by the lower appellate Court, however erroneous, unless they are vitiated by some error of law. Subsequently to the date of the judgments under appeal, the Board has had occasion to emphasise the fact that this rule is equally applicable to cases, such as this, in which the findings of the lower appellate Court are based on inferences drawn from the documents exhibited* in evidence. This question is dealt with in the third and fourth propositions laid down in the judgment delivered by Sir Binod Mitter in *Wali Mohammad v. Mohammad Baksh*.⁴⁸

Secy. of
State v.
Rameswaram
(P.C.).

"(3) Where the question to be decided is one of fact, it does not involve an issue of law merely because documents which were not instruments of title or otherwise the direct foundations of rights, but were really historical materials, have to be considered for the purpose of deciding the question: see *Midnapore Zamindary Company v. Uma Charan Mandal*.⁴⁹

Midnapore
Zamindary
Co. v. Uma
Charan.

In the last cited case the question the Board had to decide was the date of the origin of an under-tenure. The first appellate Court fixed the date from the contents of some documents. No oral evidence had been called in this case.

"(4) A second appeal would not lie because some portion of the evidence might be contained in a document or documents, and the first appellate Court had

⁴⁷ 61 I.A. 163: 57 Mad. 652: 66 M.L.J. 595: 38 C.W.N. 533: 16 P.L.T. 7: 59 C.L.J. 262: 148 I.C. 778: A.I.R. 1934 P.C. 112.

⁴⁸ 57 I.A. 86.

⁴⁹ 29 C.W.N. 131 (P.C.).

Nowbut
Singh v.
Dharee
Singh.
Sahebrao
v.
Jaiwantrao
(P.C.).

made a mistake as to its meaning: see *Nowbut Singh v. Dharee Singh*.⁵⁰

In the Privy Council case of *Sahebrao Narayanrao Deshmukh v. Jaiwantrao Yadaorao Deshmukh*,⁵¹ Sir John Wallis observed: "Both the Subordinate and the District Courts found that the plaintiffs were members of the family and had a share in the *watan*, and that the defendant had failed to prove that this *larwa-jama* had been granted to his great-grandfather Khulsabrao. On the other hand, they found in the defendant's favour that the first plaintiff had failed to prove that he had ever received any share of it..... This was a finding of fact by the lower appellate Court, and under sec. 100, C. P. C., could only be reversed on second appeal by reason of "the decree being contrary to law or some usage having the force of law." The first question, therefore, for their Lordships is, had the Court of the Judicial Commissioners any sufficient reason for reversing the judgment and decree of the lower appellate Court as contrary to law? In their Lordships' opinion, the respondents have not succeeded in showing that the findings of the lower appellate Court were vitiated by any error of law.

Their Lordships have already carefully examined the entries in the *Inam* documents relating to allowances with a view of seeing if there had been any misconstruction of them by the lower appellate Court which could be treated as contrary to law. None has been suggested and they have been unable to find any. Unless there has been misconstruction a mistaken inference from documents as has been pointed out in the cases cited, is an error not of law but of fact."

The question whether the presumption arising in favour of the entry in the record of rights has been rebutted by evidence is one of fact. Where the lower

⁵⁰ 19 W.R. 222.

⁵¹ 60 I.A. 231: 35 Bom.L.R. 816: 65 M.L.J. 154: 29 N.L.R. 210: 57 C.L.J. 519: A.I.R. 1933 P.C. 171: 143 I.C. 437.

appellate Court considers the evidence before it and holds that it has not been rebutted, it is not permissible for the High Court sitting in second appeal to decide the point of fact for itself. All that the High Court has to investigate is whether the lower Court's decision is vitiated by any error of law.⁵² Whether or not two transactions are integral parts of the same transaction, connected and inter-dependent or whether they are disconnected and dissociated is in each case a question of fact which has to be ascertained from the evidence produced in the case and no question of legal presumption arises.⁵³ Where the lower Court has refused to draw the presumption under sec. 90 of the Evidence Act, after considering all the circumstances of the case, the High Court will not in second appeal interfere with such an exercise of discretion.⁵⁴

Where the finding of fact is vitiated by an error of law as regards the onus of proof, the High Court can interfere in second appeal.⁵⁵ The question of onus as a determining factor of the whole case can only arise if the tribunal finds the evidence *pro* and *con* so evenly balanced that it can come to no conclusion. Then the onus will determine the matter. But if the tribunal after hearing and weighing the evidence comes to a definite conclusion, the onus has nothing to do with it and need not be further considered. But where an erroneous view as to the law in regard to onus has coloured the mind of the Court and disabled it from weighing the evidence evenly, then alone the finding of the appellate Court on a question of fact will not be binding in second appeal.⁵⁶ Where the first appellate Court, on a wrong allocation of the *onus probandi*,

Onus
Probandi.

⁵² Ram Racheya v. Kamakhya, 16 P.L.T. 363: A.I.R. 1935 Pat. 415.

⁵³ Ram Das v. Brindaban, 1931 A.L.J. 571: 129 I.C. 719.

⁵⁴ Imam Din v. Natha Singh, 32 P.L.R. 626: 134 I.C. 296: A.I.R. 1932 Lah. 43.

⁵⁵ Manmatha Nath v. Bijoy Kumar, 53 C.L.J. 616: A.I.R. 1932 Cal. 351.

⁵⁶ Pattammal v. Ramayya, 1932 M.W.N. 343: A.I.R. 1932 Mad. 415.

found that the tenant got possession of all the land of the *kabuliyat*, it was held that the finding not being based on positive evidence, was not final and binding under sec. 100, C. P. Code.⁵⁷ But where the burden of proof was wrongly thrown on the plaintiffs and it was done with their acquiescence and no objection on that score had been taken in either of the lower Courts, it was held that it was too late to raise the objection in second appeal, especially in a case in which there was no question of the evidence being nicely balanced, but the evidence was practically all one way.⁵⁸

Finding as
to *bona fide*
conduct.

The finding that a party's conduct is *bona fide* is usually a finding of fact being an inference of fact from facts. But where such a finding has not been based on any evidence or on facts it can be challenged in second appeal.⁵⁹ The finding of the lower appellate Court based on a consideration of all the proved and admitted facts of the case that the sale in favour of the defendants was genuine and for consideration, is a finding of fact which cannot be disturbed in second appeal.⁶⁰ Whether a promissory note was for a cash consideration or not, is a finding of fact not open to challenge in second appeal.⁶¹

Decision
contrary to
law.

A second appeal will lie where the decision is contrary to law. It is certainly open to the High Court to ignore a point even of law, if it is raised for the first time in second appeal. At the same time the power of a Court of second appeal to give effect to a plain provision of law even though not raised in the Courts below cannot be questioned. Where the equities of a case require such a course to be adopted,

⁵⁷ Jogesh Chandra *v.* Emdad Meah, 59 I.A. 29: 59 Cal. 1012: 36 C.W.N. 221: 55 C.L.J. 72: 62 M.L.J. 336: A.I.R. 1932 P.C. 28.

⁵⁸ Srinivasalu *v.* Ramakrishna, 1933 M.W.N. 689: A.I.R. 1933 Mad. 353.

⁵⁹ Ghasi *v.* Manga, 33 P.L.R. 263: A.I.R. 1932 Lah. 322: 136 I.C. 710.

⁶⁰ Chintamanrao *v.* Vithal, 131 I.C. 662.

⁶¹ Lacha Ram *v.* Hem Raj, 33 P.L.R. 120: 134 I.C. 121.

there is no legal bar to the point being taken cognizance of by the Court of second appeal.⁶²

Questions of law and fact are not always easy to disentangle. Where the question is whether proper legal inference has been drawn from a certain proved fact, it is a question of law and not of fact.⁶³ The question whether a tenancy is permanent or not is a legal inference drawn from facts and is not a mere question of fact.⁶⁴ Though a substantial question may, and generally does, arise in determining whether a tenant is a *raiyat* or a tenure-holder, the point ultimately depends on questions of fact. In second appeal the High Court cannot go behind the findings of fact of the lower appellate Court unless such findings result from the misconstruction of a document of title or the misapplication of law or procedure. Such findings cannot be assailed in second appeal, however gross or inexcusable the error may be therein, if the lower appellate Court had before it evidence proper for its consideration in support of its finding.⁶⁵ Where the question for determination turns upon the application of certain legal principles to the facts proved and the true conclusion to be drawn from those facts viewed in the light of those principles, the question is one of law.⁶⁶

Questions
of Law
and Fact.

The question as to whether there has been an abandonment of land by a *raiyat* is largely and principally a question of fact. But the inference from the facts found, as to whether there was abandonment or

⁶² *Saira Khatun v. Qutubuddin*, 157 I.C. 615.

⁶³ *Ram Sarup v. Abdul Haq*, 12 Lah. 741: 33 P.L.R. 139: A.I.R. 1931 Lah. 395; *Secy. of State v. Rajaram*, 36 Bom.L.R. 1055: 155 I.C. 763; *Dhanno Mal v. Moti Sagar*, 54 I.A. 178: 8 Lah. 573: 31 C.W.N. 677: 101 I.C. 355.

⁶⁴ *Manmathanath v. Pramathanath*, 61 Cal. 32: 38 C.W.N. 65: A.I.R. 1934 Cal. 288; *Monmotha Nath v. Rajeswar*, 55 Cal. 355: 32 C.W.N. 184; *Kamal Kumar v. Nandalal*, 56 Cal. 738: 33 C.W.N. 211.

⁶⁵ *Tarni Singh v. Sat Narain*, 6 P.L.T. 787: A.I.R. 1926 Pat. 9; *Debendra Nath v. Pashupati*, 35 C.W.N. 1047.

⁶⁶ *Bishambar v. Nisar Ali*, 8 O.W.N. 1281: 135 I.C. 693.

not, is a question of law.⁶⁷ A finding on the question whether there was forfeiture of tenancy by denial of title of landlord is a finding of fact and cannot be interfered with in second appeal.⁶⁸

Exercise of
discretion
under s. 5,
Lim. Act.

Where the Court below, upon a consideration of the facts before it and also the surrounding circumstances, comes to the conclusion that no proper case has been made out for exercising its discretion for extending the period of limitation under sec. 5 of the Limitation Act and dismissed the suit on that ground, there is no point of law involved in the appeal so as to call for interference in second appeal.⁶⁹ But where the discretion has been exercised arbitrarily without due regard to the principles, that discretion cannot be said to have been properly exercised and it is open to challenge in second appeal.⁷⁰ The question whether the admitted facts and circumstances constitute sufficient and reasonable cause is one of law.⁷¹ The question of "good faith" within the meaning of sec. 14 of the Limitation Act is one of fact.⁷²

Good faith.

Order of
Remand.

"An appeal lies from an order remanding a case, where an appeal would lie from the decree of the appellate Court [O. 43, r. 1, cl. (u)]. This means that the order of remand is appealable only in cases in which the decree, which would have been passed by the appellate Court had that Court instead of remanding the case under this rule decided the whole case and passed a decree, is appealable.⁷³ If no appeal is preferred from the order of remand, the party

⁶⁷ *Golam Mustapha v. Hanumandas*, 61 Cal. 937: A.I.R. 1935 Cal. 80.

⁶⁸ *Karam Chand v. Amar Nath*, 34 P.L.R. 884: 145 I.C. 992.

⁶⁹ *Rama Shankar v. Janki Prasad*, 1930 A.L.J. 1256: 130 I.C. 840.

⁷⁰ *Badri Prasad v. Amjid Ali*, 1933 A.L.J. 561: 144 I.C. 133.

⁷¹ *Kanshi Ram v. Rama Mal*, 135 I.C. 221.

⁷² *Kala Singh v. Gehna Singh*, 14 Lah. 106: 33 P.L.R. 740: 138 I.C. 646: A.I.R. 1932 Lah. 531.

⁷³ *Faiz Ahmad v. Badar Din*, (1911) *Punj. Rec.* No. 50, p. 191; *Sawar Singh v. Mothu*, (1914) *Punj. Rec.* No. 85, p. 299; *Malap Kaur v. Hakim Singh*, (1915) *Punj. Rec.* No. 8, p. 58; *Waryam Singh v. Harnam Singh*, (1918) *Punj. Rec.* No. 109, p. 354.

aggrieved by the order cannot afterwards dispute its correctness in an appeal from the final decree. But though an appeal lies from an order of remand, it must be preferred, according to the Calcutta High Court, before the final disposal of the remanded suit, otherwise it cannot be entertained. The reason given is that the right of appeal given by sec. 104 and Or. 43 from orders specified therein ceases with the disposal of the suit.⁷⁴ On the other hand it has been held by the High Court of Allahabad, that the appeal may be preferred even after the decision of the remanded suit, provided it is within the period of limitation. The Allahabad High Court proceeds on the ground that there is no provision in the Code imposing any such restriction on the right of appeal.⁷⁵ The period of limitation for an appeal from an order of remand is 90 days from the date of the order. [Limitation Act, Art. 156].

View of
Calcutta &
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Though an appeal lies under rule 1 of Or. 43 from an order of remand, no appeal will lie from the order when the order is itself made in an appeal preferred under any other clause of that rule. Thus if an appeal is preferred under Or. 43, r. 1, cl. (a), from an order under Or. 7, r. 10, or under Or. 43, r. 1, cl. (j), from an order under Or. 21, r. 92, or under Or. 43, r. 1, cl. (q), from an order under Or. 38, r. 6, or under any other clause of Order 43, r. 1, and the appellate Court allows the appeal and makes an order of remand, no appeal will lie from the order of remand under Or. 43, r. 1, cl. (u). The reason is that cl. (u) of r. 1 of Or. 43, is subject to sec. 104, sub-s. (2), which provides that no appeal shall lie from any order passed in appeal [it may be an order of remand] under that section.⁷⁶ " 77

⁷⁴ *Madhu Sudhan v. Kamani*, 32 Cal. 1023.

⁷⁵ *Uman Kunwari v. Jarbandhan*, 30 All. 479.

⁷⁶ *Naubat Singh v. Baldeo Singh*, 33 All. 479; *Mathura v. Nobin Chandra*, 24 Cal. 774.

⁷⁷ *Mulla's C. P. Code*, 7th Ed. p. 840.

PART IV.

COMPETENCY OF APPEAL

SYNOPSIS.

- | | |
|---|---|
| 1. Sec. 96 and Sec. 104, C. P. Code. | 13. Orders under Or. 47. |
| 2. Orders under Sec. 47, C. P. Code appealable. | 14. Orders under B. T. Act. |
| 3. Interlocutory order. | 15. Orders under Indian Companies Act. |
| 4. Orders under Or. 9, r. 9 and r. 13. | 16. Orders under B. A. D. Act. |
| 5. Orders under Or. 16. | 17. Orders under Beng. Wakf Act. |
| 6. Orders under Or. 21. | 18. Orders under Succession Act. |
| 7. Orders under Or. 22. | 19. Orders under Income-tax Act. |
| 8. Orders under Or. 23. | 20. Orders under Provincial Insolvency Act. |
| 9. Orders under Or. 34. | 21. Provincial S. C. C. Act. |
| 10. Orders under Or. 40. | |
| 11. Orders under Or. 41. | |
| 12. Orders under Or. 43. | |

“The general rule undoubtedly is,” said Tindal, C. J., in *Albon v. Pyke*,¹ “that the jurisdiction of Superior Courts is not taken away except by express words or necessary implication.” But it is not to be assumed that there is a right of appeal in every matter which comes under the consideration of a Court; such right must be given by statute, or by some authority equivalent to a statute.² Sec. 96 of the Civil Procedure Code says that, save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decision of such Court. Sec. 104 of the Civil Procedure Code speaks of orders which only are

¹ (1842) 4 M. & G. 421.

² *Minakshi v. Subramanya*, 14 I.A. 160; 11 Mad. 26; *Parasurama v. Seshier*, 27 Mad. 504; *Rangoon Botatoung Co. v. Collector of Rangoon*, 39 I.A. 197; 40 Cal. 21; *Rajagopala v. Hindu Religious Endowments Board*, 57 Mad. 271; *Dayabhai v. Murugappa*, 13 Rang. 457.

appealable and expressly says that other orders are not appealable. Consequently, unless there is no bar expressly made either in the Civil Procedure Code or in any other statute, an appeal shall lie from every decree passed by a Court of first instance, and as to orders no appeal shall lie unless they fall under any of those mentioned in sec. 104 of the Civil Procedure Code, or unless any special statute allows it in express terms.

An appeal lies from all orders under sec. 47, C. P. Code and also a second appeal. But all orders in execution proceedings are not appealable. An appeal lies from orders under sec. 47 and from those orders which are declared appealable under sec. 104 of the Civil Procedure Code. Attempts are frequently made to show that the order comes under sec. 47 so that a second appeal may be availed of. Similarly where an order which is appealable under sec. 104, C. P. Code, is passed in execution proceedings, attempts are made to show that the order comes under sec. 47 to avail of a second appeal. An order which purports to be made under sec. 47, though it is wrongly made as being on a plea which ought not to be entertained in execution, is still an order under sec. 47 and therefore is appealable.³

Orders
under sec.
47 appeal-
able.

The question whether certain persons are or are not the legal representatives of the judgment-debtor is one of the questions falling within sec. 47 of the Civil Procedure Code and the decision thereof is appealable.⁴ It is well settled that a transferee from the judgment-debtor or a purchaser of his interest at auction sale is a representative of the judgment-debtor within the meaning of sec. 47 of the Code only if the

³ *Mohan v. Panchanan*, 53 Cal. 837: A.I.R. 1927 Cal. 106; *Dwipal v. Jiban*, 58 Cal. 808: 35 C.W.N. 286: A.I.R. 1931 Cal. 574.

⁴ *Jnanendra Nath v. Girish Chandra*, 39 C.W.N. 313; *Khem Singh v. Raghubir Singh*, 47 All. 365; *Badri Narayan v. Jai Kishen*, 16 All. 483; *Krishnama v. Appasami*, 25 Mad. 545; *Ganga Das v. Yakub Ali*, 27 Cal. 670.

decree binds him or affects his purchase.⁵ Where a decree is assigned and the assignee assigns it to another but the second assignee's application for permission to execute the decree and to recognize the assignment is opposed by the first assignee and the application is dismissed, an appeal will lie from the order of dismissal as sec. 47 applies to the case.⁶ The issue on the validity of the assignment of a decree decided by the executing Court is an issue solely between the decree-holder and his assignee. An appeal by the judgment-debtor against such a decision is not competent as he has no interest in the issue decided.⁷

An order dismissing an execution petition for failure of the decree-holder to comply with the order of the Court directing him to file a petition and affidavit for appointment of a guardian of a minor judgment-debtor, is one under sec. 47 and a second appeal is competent against such an order.⁸ An order issuing a warrant of arrest of a judgment-debtor is an order passed under sec. 47 and is appealable as a decree.⁹ An application by the judgment-debtor for setting aside the sale under Or. 21, r. 90, C. P. Code, was compromised on condition that the sale would be set aside without any evidence if the judgment-debtor paid the decretal amount within a certain date and that in case of default by the judgment-debtor, his application would be dismissed and the sale confirmed without any evidence. The Subordinate Judge set aside the sale holding that the judgment-debtor had complied substantially with the terms of compromise. On appeal by the decree-holder auction-purchaser, the

⁵ *Ishan Chandra v. Benimadhab*, 24 Cal. 62: 1 C.W.N. 36 (F.B.); *Jnanendra Nath v. Girish Chandra*, 39 C.W.N. 313.

⁶ *Narasimha v. Venkatachalapathi*, 57 Mad. 457.

⁷ *Achhru Ram v. Fazal*, 37 P.L.R. 305: A.I.R. 1935 Lah. 609.

⁸ *Brojendra Kishore v. Shamserali*, 41 C.W.N. 531: A.I.R. 1937 Cal. 259.

⁹ *Sardar Khan v. Sundar Singh*, 39 P.L.R. 690: A.I.R. 1937 Lah. 706: 169 I.C. 613.

District Judge set aside the order of the Subordinate Judge setting aside the sale. He, however, did not confirm the sale but ordered the case for setting aside the sale to be heard on merits as he was of opinion that the compromise was not binding on the judgment-debtor. It was held that the order of the District Judge was not an order under sec. 47, C. P. Code, and consequently a second appeal to the High Court was not maintainable.¹⁰ The question whether or not an execution was time-barred is a question within sec. 47 arising between the parties and relating to execution of the decree and therefore its decision is a decree as defined in sec. 2 of the Civil procedure Code.¹¹ An appeal is competent from an order that the judgment-debtor is not entitled to the benefit of Or. 21, r. 40.¹² No second appeal lies against an order setting aside or refusing to set aside a sale, although the matter is one between the decree-holder auction-purchaser and the judgment-debtor.¹³ No second appeal lies in a matter of execution in a suit which is of a Small Cause nature.¹⁴

Under sec. 244 of the Code of Civil Procedure, 1882, the amount of mesne profits was determined in execution proceedings, and the decision determining mesne profits, being an order in execution proceedings was appealable as a decree. Under Or. 20, r. 12 of the Civil Procedure Code of 1908, the amount of mesne profits is to be determined by the decree itself, and a party aggrieved by the determination as to mesne profits may now prefer an appeal from the decree itself.¹⁵

¹⁰ *Radharaman v. Makhom Lal*, 41 C.W.N. 890: A.I.R. 1937 Cal. 461.

¹¹ *S. M. Lal Chaudhury v. Narayan Prasad*, 84 I.C. 576.

¹² *Jaidev v. Yusuf Ali*, A.I.R. 1929 Lah. 141: 111 I.C. 707.

¹³ *Hara Singh v. Labh Singh*, 161 I.C. 216: A.I.R. 1935 Lah. 962; *Satyendra v. Charu Chandra*, 45 C.L.J. 557: 104 I.C. 188.

¹⁴ *P. K. Veerarayan v. Ayyakutti*, 48 M.L.J. 499: 90 I.C. 794; *Mohan Mal v. Tulsi Ram*, 3 Lah. 141: 67 I.C. 718.

¹⁵ *Bhup Indor v. Bijai*, 27 I.A. 209: 23 All. 152.

Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit. A preliminary decree in a suit for the dissolution of a partnership or the taking of partnership accounts is appealable under sec. 96, C. P. Code. If no appeal is preferred within the period of limitation, the party aggrieved by such decree will be precluded by virtue of the provisions of sec. 97, C. P. Code, from impugning its correctness in an appeal from the final decree.

Interlocutory order as to maintainability of application for mesne profits not appealable.

An interlocutory order of the lower Court relating to the maintainability of an application for mesne profits before the passing of the final decree is not open to appeal. It can only be challenged in an appeal from the final decree. Any one of the joint wrongdoers against whom a decree has been passed may appeal from the decree. What would be the form of a decree in a suit for recovery of mesne profits was elaborately discussed in the judgment of the case of *Basanta Kumar Basu v. Lala Ram Sankar Ray*.¹⁶

Or.9, r. 9.

An appeal is competent from an order rejecting an application (in a case open to appeal) made under Or. 9, r. 9, C. P. Code, but no appeal lies from an order granting the application.¹⁷ The High Court of Calcutta has held in *Mathura v. Haran Chandra*¹⁸ that Or. 43, r. 1, cl. (c), applies also to an order rejecting an application to set aside the dismissal of a suit made by a single Judge sitting on the Original Side of the High Court. But no appeal lies from an order rejecting an application to set aside the dis-

¹⁶ 55 C.L.J. 235.

¹⁷ *Hirdhamun v. Jinghoor*, 5 Cal. 711.

¹⁸ 43 Cal. 857.

missal of an application for restoration of a suit dismissed for default.¹⁹ Or. 9, r. 9 explicitly permits the plaintiff to apply for restoration of a dismissed petition, and that being so, he has necessarily the right to question the correctness of the order on it in appeal and on revision.²⁰

An application under Or. 9, r. 13, C. P. Code, must either be allowed or disallowed. If it is allowed no appeal will lie. If it is disallowed an appeal will lie. When a conditional order, that the application to set aside an *ex parte* decree will be allowed if the defendant deposits the full decretal amount within 15 days, but if he fails it would be dismissed, is made and the condition is complied with, then the application is allowed and no appeal will lie. If the condition is not complied with, then it is open to the party concerned to ask for a final order dismissing the application, and then an appeal will lie.²¹ An order setting aside an *ex parte* decree is not an appealable order.²² No appeal lies from the dismissal of an application to set aside an *ex parte* award made in the course of land acquisition proceedings.²³

“An appeal lies from an order pronouncing judgment against a party under sub-rule (2) of r. 4 of Or. 10, Civil Procedure Code. In a suit by A against B, C and D, the Court struck off B's defence on account of his failure to appear in person, but ultimately decided the case on the merits and passed a decree against all three defendants. There being common grounds of defence it was held that B was not entitled to appeal from the order striking off his defence, but that he was competent to appeal from the final decree

¹⁹ Brij Mohan v. Raghoba, 139 I.C. 296: A.I.R. 1932 Nag. 101.

²⁰ Doolaji v. Kulusum, 1934 M.W.N. 1114: 40 L.W. 774: 67 M.L.J. 485: 151 I.C. 765.

²¹ Ramaswami v. N. A. Chettyar Firm, 144 I.C. 186: A.I.R. 1933 Rang. 63.

²² Radha Mohan v. Abbas Ali, 53 All. 612.

²³ Roshan Lal v. Firm Bhridhi, 3 Pat. 839: 6 P.L.T. 212.

and to call in question upon that appeal the order striking off his defence."²⁴

It is for the trial Court to decide in what order it will decide the issues and the High Court will not interfere in revision in order to make a direction on this point.²⁵ No appeal lies from an order refusing to frame an issue asked for by a party to a suit.²⁶ The High Court will not, in second appeal, remand a case to the lower Court for the trial of an issue which does not arise on the pleadings.²⁷ Under Or. 14, r. 5 (1) the Court has got very wide powers to amend the issues or frame additional issues as may be necessary for determining the matters in controversy between the parties before the passing of a decree.²⁸

Or. 16, r. 1.

Under Or. 16, r. 1, C. P. Code, a party has an absolute right to summon his witnesses, and so long as he pays the necessary expenses, to insist that their attendance shall be enforced. The only case in which the Court has power to refuse to issue summonses is where the application is not made *bona fide* or where in the exercise of its inherent powers to prevent the abuse of its own processes it is necessary to refuse to issue summonses.²⁹ Where a party applies for summonses to witnesses, but the application is refused, he cannot appeal from the order of refusal. He shall have to wait until the case is disposed of, and if the decision is against him, he may appeal from the decree, and set forth the lower Court's refusal to issue summonses as a ground of objection in the memorandum of appeal.³⁰

²⁴ *Madhuri v. Bithal*, 39 All. 450; Mulla's C. P. Code, 7th Ed., 464.

²⁵ *Sheo Baran v. Lachmi Narain*, 1933 A.L.J. 784; A.I.R. 1933 All. 749.

²⁶ *Ebrahim v. Fuckhrunnissa*, 4 Cal. 531; *Tuljaram v. Alagappa*, 35 Mad. 1.

²⁷ *Fateh Muhammad v. Imamuddin*, 68 I.C. 106.

²⁸ *Trimbakdas v. Mathabai*, 124 I.C. 609.

²⁹ *Pritam v. Sobha Singh*, A.I.R. 1924 Lah. 647; 75 I.C. 866.

³⁰ Sec. 105, C. P. Code.

Under Or. 16, r. 20, C. P. Code, where any party Or. 16, r. 20.
to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit. An appeal lies from an order under this rule pronouncing judgment against a party.³¹

Where a party seeks to set aside an order under Or. 17, r. 2, C. P. Code, the proper course is to apply Or. 17.
under Or. 9, r. 13 and not under Or. 47, r. 1 of the Civil Procedure Code. But where a case is decided under Or. 17, r. 3, the decision amounts to a decree, and the remedy of the party aggrieved is by way of appeal³² or by way of review.³³

An order allowing or refusing an application to record an adjustment of a decree or a payment made out of Court under a decree is a *decree* within the meaning of sec. 2, cl. 2, read with sec. 47, and is therefore appealable under sec. 96, C. P. Code.³⁴ No appeal lies to the High Court against an order refusing to set aside a dismissal in default of an application under Or. 21, r. 2, C. P. Code.³⁵ All questions arising Or. 21, r. 2.
between a decree-holder on the one hand and the judgment-debtor on the other, with regard to execution, discharge or satisfaction of the decree, come within sec. 47 of the Civil Procedure Code, and are appealable. But when the question is between the decree-holders *inter se*, no appeal will lie from any order made upon the application whether the application is allowed or refused. Where an application for certifying a

³¹ Or. 43, r. 1 (h), C. P. Code.

³² *Lalta Prasad v. Nand Kishore*, 22 All. 66; *Gaura v. Ghasita*, 34 All. 123; *Pichamma v. Sreeramulu*, 41 Mad. 286; *Sukku v. Ram Lotan*, 41 All. 663.

³³ *Pichamma v. Sreeramulu*, 41 Mad. 286.

³⁴ *Jamna v. Mathura*, 16 All. 129; *Rangji v. Bhaiji*, 11 Bom. 57; *Guruvayya v. Vudayappa*, 18 Mad. 26.

³⁵ *Lakhsat v. Bella Mall*, 132 I.C. 206.

payment out of the Court was made under Or. 21, r. 2, cl. (2), within time to the Court which was executing the decree and where an inquiry was therefore invited by the judgment-debtor as to the payment alleged to have been made by him to the decree-holder during the pendency of the execution proceedings, his application could not be thrown out upon the ground that it was not certified under cl. 3 of that rule. The application was made for the purpose of having the payment certified and until that question was decided the stage of cl. 3 did not arise. The application of the judgment-debtor for certifying payments by him to the decree-holder out of Court is an application in course of the execution of the decree obtained by the decree-holder. The application is therefore one under sec. 47, C. P. Code, and the dismissal of that application certainly gives rise to a right of appeal to the judgment-debtor.³⁶

Or. 21, r. 58. No appeal lies from an order made in a claim case under Or. 21, r. 58 of the Civil Procedure Code. Where an objector has misdescribed the objection as one under Or. 21, r. 58 when it is really one under sec. 47 and the Court acting under a misconception deals with it as one under Or. 21 r. 58, the order nevertheless operates as a decree and is appealable under sec. 47, C. P. Code.³⁷ An order on the Original Side dismissing an application under Or. 21, r. 51 is not appealable under Cl. 15 of the Letters Patent because of the prohibition contained in Order 21, r. 63.³⁸

Or. 21, r. 66. No appeal lies from an order fixing a valuation of the judgment-debtor's property under Or. 21, r. 66, as it is not an order relating to the execution, discharge

³⁶ *Jadunandan v. Sheonandan*, 1 Pat. 644: A.I.R. 1922 Pat. 276.

³⁷ *Gopal v. Ishar*, 33 P.L.R. 496: 137 I.C. 258.

³⁸ *Kalooram v. Motilal*, 60 Cal. 915: 37 C.W.N. 641: A.I.R. 1933 Cal. 715.

or satisfaction of a decree within the meaning of sec. 47, C. P. Code.³⁹ Where in pursuance of a notice under Or. 21, r. 66 the judgment-debtor raised an objection that the value of the properties as estimated by the decree-holder was inadequate and that the properties should be sold in separate lots, but the Court overruled the objections, it was held that the order was not appealable. The setting out in the proclamation of sale the valuation of the properties as given by the decree-holder without a previous enquiry as to the valuation would be a material irregularity in the publication of the sale, which can be a ground of application for the setting aside of the sale under Or. 21, r. 90 of the Civil Procedure Code. Such an application can be made only after the sale has taken place, and whether it will succeed or not will depend on whether the under-valuation set out in the proclamation is gross and whether substantial injury has resulted to the applicant on account of such under-valuation. The order approving the sale proclamation cannot, however, give the dissatisfied party a right of appeal against the order for issue of the proclamation before the sale takes place.⁴⁰ Or. 21, r. 90.

The High Courts of Calcutta⁴¹ and Madras⁴² have held that an order under Or. 21, r. 71 allowing or disallowing an application for recovery of the loss by re-sale is appealable as a decree. But the High Court of Allahabad has held that it is not appealable.⁴³ Or. 21, rr. 71, 72.

An order refusing to give a decree-holder permission to purchase at the Court sale is not appealable. But an appeal lies from an order setting aside or

³⁹ *Ajudhia Prasad v. Gopi Nath*, 39 All. 415; *Panch Dhar v. Mani*, 16 C.W.N. 970; *Deokinandan v. Bansi Singh*, 16 C.W.N. 124; *Deokinandan v. Dhakeswar*, 2 Pat.L.J. 13; *Sivagami v. Subramania*, 27 Mad. 259 (F.B.).

⁴⁰ *Nathu Mal v. Yeshoda*, 134 I.C. 833; A.I.R. 1932 All. 136.

⁴¹ *Kali Kishore v. Guru Prasad*, 25 Cal. 99.

⁴² *Amir Baksha v. Venkatachala*, 18 Mad. 439.

⁴³ *Deoki v. Tapesri*, 14 All. 201.

refusing to set aside a sale under Or. 21, r. 72 of the Civil Procedure Code.⁴⁴

An order refusing payment out of the deposit to the decree-holder is not one under sec. 47, C. P. Code, and is not appealable.⁴⁵

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appeal.

An appeal is competent from an order under Or. 21, r. 90 and r. 92 setting aside or refusing to set aside a sale. Only one appeal is allowed, but no second appeal lies from the order of the first appellate Court. Nor does an appeal lie from the order of the first appellate Court under the Letters Patent.⁴⁶

Or. 21,
rr. 101, 103.

No appeal lies from an order under Or. 21, r. 101, C. P. Code. The right of appeal is a creature of statute and it can be exercised only by those in whom the power is vested expressly or implied by the statute. In a suit under Or. 21, r. 103, against the Official Receiver representing the estate of an insolvent, a decree was passed in favour of the plaintiff. The Official Receiver did not prefer an appeal. The appellant, who was one of the creditors of the insolvent represented by the Official Receiver in the trial Court, presented an appeal against the decree in so far as it related to the Official Receiver and an application for leave to appeal against that decree on behalf of himself and the general body of creditors of the insolvent. It was held that the appellant, not having been a party to the suit, was incompetent to prefer the appeal.⁴⁷

No appeal lies from an order made under rule 3 of Or. 22. When the legal representative of a deceased plaintiff applies within time prescribed by the law of limitation to have his name entered on the record, the

⁴⁴ *Jodoonath v. Brojo Mohan*, 13 Cal. 174; *Ko Tha Hnyin v. Ma Hnin*, 38 I.A. 126; 38 Cal. 717.

⁴⁵ *Krishna v. Arunachalam*, 58 Mad. 972.

⁴⁶ Or. 43, r. 1, cl. (j) and Sec. 104, sub-sec. (2). *Naimullah v. Ihsanullah*, 14 All. 226 (F.B.); *Piari Lal v. Madan Lal*, 39 All. 191.

⁴⁷ *Indian Bank v. Seth Bansiram*, 57 Mad. 670.

Court, is bound under R. 3 of Or. 22, C. P. Code, to enter his name. If the Court fails to do so, it amounts to a failure to exercise jurisdiction vested in it by law under this rule, and the High Court may interfere in revision under sec. 115 of the Civil Procedure Code. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court. No appeal lies from an order under rule 5 of Or. 22, but a party aggrieved by the order may object to the order in an appeal from the decree, provided he was a party to the decree. An appeal is competent from an order refusing to set aside the abatement or dismissal of a suit. An appeal lies from an order giving or refusing to give leave under Or. 22, r. 10 of the Civil Procedure Code.

Or. 22.
Or. 23—
granting
leave to
withdraw
not appeal-
able.

But revision lies.

A decision under rule 1 of Or. 23, C. P. Code, granting leave to a plaintiff to withdraw from a suit or to abandon a part of his claim with liberty to institute a fresh suit is not a decree, and is therefore non-appealable. When an order is made under this rule granting leave to the plaintiff to withdraw from the suit with liberty to bring a fresh suit on the alleged ground of a "formal defect," but there is no defect in fact, and the order was made by the lower Court without any enquiry as to the existence of the alleged defect, the High Court may set aside the order in revision. An order under Or. 23, rule 3, recording or refusing to record a compromise is an appealable order.

In the case of *Haridas Sadhukhan v. Shebait of Sri Sri Iswar Ratneswar and Kedar Nath Shib Thakur*,⁴⁸ the question whether an appeal from an order under Or. 23, r. 3 of the Code of Civil Procedure is competent, if a decree is made before the appeal is presented, was considered by Guha and Ghose, JJ., and it was held that an appeal from an order under

⁴⁸ 57 C.L.J. 26.

Or. 23, r. 3 of the Civil Procedure Code is not incompetent, if a decree is made before the appeal is presented. It is not necessary for the party aggrieved by an order under Or. 23, r. 3 to appeal both from the order and the decree in order to maintain his appeal against the order under Or. 23, r. 3.

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In the judgment of the case, Guha, J., observed: "It is necessary to mention that a preliminary objection was raised on behalf of the plaintiff respondent, as to the maintainability of the appeal to this Court, on the ground that no appeal had been preferred against the decree that was passed in the case, and which had been signed before the appeal to this Court was filed, on the 13th January, 1931. It would appear that the order of the learned Subordinate Judge recording the compromise under Order XXIII, rule 3 of the Code and directing the drawing up of the decree, the order against which this appeal is directed, was passed on the 20th September, 1930. The decree was actually signed on 4th November, 1930. The appeal to this Court was filed on the 13th January, 1931. There is no doubt that on the date on which this appeal was filed, there was the decree passed by the Court below, in existence; and the preliminary objection relates to this, that no appeal having been preferred against the decree, the appeal against the order dated the 20th September, 1930, made under Order XXIII, rule 3 was not maintainable. The objection so raised is based upon a decision of this Court in the case *The Bengal Coal Company Ltd. v. Apcar Collieries Ltd.*⁴⁹ It appears to us that the decision in that case must now be taken to be superseded by the decision of a Full Bench of this Court in the case of *Talebali v. Abdul Aziz*.⁵⁰ The case in 29 C.W.N. 928, was referred to in the course of the argument before the Full Bench; and having regard to the principle upon which the decision of the Full Bench is based, it is impossible for

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Collieries.

⁴⁹ 29 C.W.N. 928.

⁵⁰ 57 Cal. 1013; 50 C.L.J. 566.

us to hold that the rule laid down in the case in 29 C.W.N. 928 is still good law. It may also be mentioned that the decision in the case reported in 29 C.W.N. 928 does not take into account the effect of section 96, clause (3), of the Code of Civil Procedure, and of the statutory right of appeal given by Order XLIII, rule 1 (m), so far as Order XXIII, rule 3 is concerned."

The High Court of Patna has held in *Sabitri Thakurain v. Mrs. F. A. Savi*,⁵¹ that no appeal lies against a decree passed upon a compromise even if the compromise be disputed. For a consent decree to come within the prohibition of sec. 96 (3) of the Civil Procedure Code, it is not necessary that the consent should continue till the passing of the decree. The High Court of Bombay has held the same view in *Onkar Bhagwan v. Gamna Lakhaji & Co.*⁵²

An order under Or. 25, rule 1, made by a High Court requiring a plaintiff to give security for the costs of a suit is a judgment within the meaning of clause 15 of the Letters Patent, and is therefore appealable.

Or. 25, r. 1,
Order under
appealable.

An order rejecting an application for prosecution of a suit as a pauper under Or. 33, rule 5, is not appealable, but it is open to revision in a proper case. Questions arising between the Government and any party to the suit under rule 11 of Order 33 would be questions coming under sec. 47, C. P. Code. An order deciding any such question is appealable.

Sabitri
v.
Savi.

An order under Or. 34, rule 3, refusing to extend the time for payment of mortgage-money is appealable.⁵³ A party aggrieved by a preliminary decree passed under rule 4 of Or. 34 may appeal from it.⁵⁴ An appeal from a decree under rule 6 of Or. 34 lies to the District Judge notwithstanding that the decree

Onkar
Bhagwan
v.
Gamna
Lahaji &
Co.

⁵¹ 12 Pat. 359; A.I.R. 1933 Pat. 306.

⁵² 57 Bom. 206.

⁵³ Or. 43, r. 1, cl. (o), C. P. Code.

⁵⁴ Sec. 97, C. P. Code.

be for a sum exceeding Rs. 5,000, if the original mortgage suit was valued at less than Rs. 5,000.⁵⁵

An order under rule 3, 4 or 6 of Or. 35 is appealable.⁵⁶ An order under rule 2, 3 or 6 of Or. 38 is appealable.⁵⁷

Order
granting or
refusing
temporary
injunction
is appeal-
able.

An appeal lies from an order refusing as well as from one granting a temporary injunction.⁵⁸ An appeal is also competent from an order purporting to be made under rule 1 of Or. 39.⁵⁹ But no appeal lies to the High Court from an order made by the lower appellate Court under that rule. But the Calcutta High Court made an order granting an injunction in the exercise of powers conferred upon High Courts by sec. 15 of the Charter Act.⁶⁰ An order made under rule 2 or rule 4 or rule 10 of Or. 39 is appealable.

An appeal lies from an order granting an application to appoint a receiver; so also an appeal will lie from an order refusing to appoint a receiver. The Court may in the exercise of its discretion make any order discharging or removing a receiver for the proper care and management of the property and the receiver has no right of appeal against the order of removal passed by the Court. In the case of *Mano Mohan Neogy v. Surendra Kumar Ray*,⁶¹ Guha, J., observed: "The first question that requires consideration is whether the order of removal of a receiver was appealable as such, irrespective of the position whether the receiver has the right to appeal against any order made under rule 1 of Order XL, which will presently be examined. The order appointing a receiver of any property under rule 1 of Order XL of the Code of

Mano-
Mohan
v.
Surendra.

⁵⁵ *Badrunnissa v. Shankar*, 41 All. 384.

⁵⁶ Or. 43, r. 1, cl. (p), C. P. Code.

⁵⁷ Or. 43, r. 1, cl. (q), C. P. Code.

⁵⁸ *Lachmi v. Ram Charan*, 35 All. 425.

⁵⁹ *Abdul v. Ganapathi*, 23 Mad. 517.

⁶⁰ *Israil v. Shamser*, 41 Cal. 436; *Hemanta v. Baranagore*, 19 C.W.N. 442.

⁶¹ 60 Cal. 162; 36 C.W.N. 903; 57 C.L.J. 408; A.I.R. 1933 Cal. 52.

Civil Procedure is an appealable order; order of removal has not been made appealable by any express provision contained in the Code. The power of a Court to remove or discharge a receiver whom it has appointed may however be regarded as well established, and that power may be exercised at any stage. The power of removal must of necessity be treated to be an adjunct to the power of appointment; a power incident to and following from the power of appointment. The authority to call a receiver into being necessarily implies the authority to terminate his functions. In this view of the matter, it may be held in favour of the appellant before us that the order of removal passed by the Subordinate Judge is an appealable order. This would be in consonance with the decision of this Court in the case of *Sripati Datta v. Bibhuti Bhusan Datta*,⁶² in which it was held, by special reference to the provisions of the General Clauses Act, that if the right of appeal was against appointment, it was given also against the removal of a receiver.

Sripati
v.
Bibhuti
Bhusan.

The next question is the one that relates to the receiver's right to appeal against an order of removal by the Court appointing him. The receiver has under that law, the right to appeal when any order is made by the Court, under rule 4 of Order XL of the Code. The express provisions so made, conferring the right of appeal so far as a receiver was concerned, limits the general right to appeal in any of the other matters mentioned in rule 1 of Order XL, including an order of removal of a receiver, by implication. It is inconceivable that the legislature intended that a receiver should have the right of appeal from any and every order passed by the Court appointing him, seeing that the express provision contained in the Civil Procedure Code limits the right of appeal by a receiver to the only case where there is a direction for the attachment of his property. The parties to the litigation had

⁶² 53 Cal. 319.

undoubtedly the right of appeal, if they were aggrieved by any order passed by the Court, under rule 1 of Order XL of the Code.

The view expressed above which follows from the plain reading of the provisions of the Code of Civil Procedure, bearing upon the question under consideration, is amply supported by authority of decisions of Courts of England. According to the English practice, a summons or notice of motion for the discharge of a receiver should be served on all the parties, and the receiver, but a receiver is not generally entitled to appear at the hearing of the application (See Kerr on Receivers, 8th Edition, page 344, and the cases referred to there). So far as decisions by Courts in America are concerned, based upon general principles, the views are very well pronounced, and we have no hesitation in accepting the same. A receiver, according to decision by American Courts, should not be heard on motion to vacate his appointment; he is not a party in interest, and has no standing to oppose the motion: He cannot interfere in questions affecting rights of parties and the disposition of the property in his hands; the receiver is not an agent or representative of the parties to the litigation. So far as the right of appeal is concerned, the decisions by American Courts indicate that a receiver cannot properly appeal from an order of the Court discharging him from his trust: the right to discharge him rests with the Court at any stage of the controversy: and from the exercise of this right the receiver cannot appeal. The Court in the exercise of its discretion may make any order discharging or removing a receiver for the proper care and management of the property in the Court's custody; and the receiver, an officer of the Court, should not be allowed by an appeal, to interfere with such an order (See High on Receivers, 4th Edition, pages 313, 975, 982, 987)."

Lea Badin
v.
Upendra.

In *Lea Badin v. Upendra Mohan Roy Chaudhury* (39 C.W.N. 155), it has been held that an order made

by a Judge on the Original Side, discharging the *interim* receiver appointed *ex parte* on the plaintiff's application pending his suit, is appealable, such an order being a "judgment" within the meaning of cl. 15 of the Letters Patent and being, further, appealable under Or. 43, r. 1.

There is no right of appeal from the orders of the Court giving directions in passing a receiver's accounts.⁶³ The Patna High Court has decided in the case of *Nrisingha Charan Nandy v. Rajniti Prasad Singh*,⁶⁴ that an order merely declaring that a receiver should be appointed is appealable under Or. 40, r. 1, even though nobody is named as receiver. But the Nagpur High Court has held that a decision that it is just and convenient to appoint a receiver does not amount to an order appointing a receiver and no appeal lies against such order until a receiver is actually appointed because it is possible that the final order appointing a receiver may never be made.⁶⁵ According to the High Court of Calcutta,⁶⁶ Bombay,⁶⁷ and Allahabad,⁶⁸ an order that a receiver be appointed without appointing anybody by name as receiver and adjourning the application to a later date for so appointing one is not an order within the meaning of Or. 40, r. 1, and it is not therefore appealable. But the Madras High Court,⁶⁹ has held the same view as that of the Patna High Court.

Nrisingha
Charan
v.
Rajniti
Prasad.

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate Court essential to the right decision of the suit upon the merits, the appellate Court may, if necessary, frame issues, and refer the same for trial to

⁶³ *Keshobati v. Macgregor*, 35 Cal. 568.

⁶⁴ 13 P.L.T. 525: A.I.R. 1932 Pat. 360.

⁶⁵ *Chandrasena v. Raoji*, A.I.R. 1934 Nag. 64.

⁶⁶ *Upendra v. Bhupendra*, 13 C.L.J. 157.

⁶⁷ *Narbadashankar v. Kevaldas*, 17 Bom.L.R. 510.

⁶⁸ *Ramji v. Koman*, 13 A.L.J. 79.

⁶⁹ *Palaniappa v. Palaniappa*, 40 Mad. 18 (F.B.).

the Court from whose decree the appeal is preferred. No appeal lies from an order referring issues for trial under rule 25 of Or. 41, Civil Procedure Code. No appeal lies where the order of remand is purported to be made under Or. 41, rule 25.⁷⁰ An order by an appellate Court refusing to admit fresh evidence under Or. 41, rule 27 is not appealable.⁷¹

Leave to
sue in
forma
pauperis
rejected not
appealable.

Or. 34, r. 6.

An order returning or rejecting an application for leave to sue in *forma pauperis* on the ground that the Court has no jurisdiction to entertain the contemplated suit, does not fall under Or. 43, rule 1 (a) and is therefore non-appealable.⁷² No appeal lies from an order rejecting an application to set aside the dismissal of an application for restoration of a suit dismissed in default.⁷³ An application for a decree under Order 34, rule 6 cannot be considered to come under "plaint" and consequently an appeal does not lie under Or. 43, rule 1 (a), from an order returning such application to be presented to the proper Court.⁷⁴ An application to set aside an *ex parte* decree was dismissed for default. An application was then made to have the dismissal set aside and for restoration of the original application, but that was dismissed on the merits. An appeal having been preferred against the latter order of dismissal, it was held that no appeal lay under Or. 43, rule 1 (c).⁷⁵ An order confirming the sale amounts to a refusal to set aside the sale and is appealable.⁷⁶ An application by a mortgagee to be added as a party to a partition suit is an application under Order 22, rule 10 and an order granting or refusing it

⁷⁰ Khoreshad v. Probhat Chandra, 37 C.W.N. 190: A.I.R. 1933 Cal. 496.

⁷¹ Mahesh Narain v. Rafiunnessa, 18 R.D. 665.

⁷² Veeraraghavamma v. Sitaramayya, 1935 M.W.N. 1135: 42 L.W. 647: A.I.R. 1935 Mad. 1043.

⁷³ Brij Mohan v. Raghoba, 139 I.C. 296.

⁷⁴ Bhup Singh v. Fateh Singh, 135 I.C. 842: A.I.R. 1931 All. 192.

⁷⁵ Sadaya Padayachi v. Chinnaaswami, 58 Mad. 814.

⁷⁶ Banarsi v. Ram Chandar, 34 P.L.R. 233: A.I.R. 1933 Lah. 210.

is appealable in accordance with the provisions of Order 43, rule 1 (1).⁷⁷

An order giving directions to the receiver for the restoration of property does not fall under Or. 40, r. 1, C. P. Code, and is not appealable.⁷⁸ Judicial opinions differ as to whether an appeal lies from an order by the appellate Court refusing to stay execution under rule 5 of Order 41. The Calcutta High Court has held that an appeal lies.⁷⁹ The Bombay High Court has held that no appeal lies, as such an order is not a "decree" within the meaning of sec. 2 (2) of the Civil Procedure Code.⁸⁰ The Madras High Court approved of the view taken by the Calcutta High Court.⁸¹ The Lahore High Court has generally taken the view that the order is not appealable.⁸²

No appeal lies from an order under r. 10 of Or. 41. An order rejecting an appeal under r. 10 of Or. 41 is not appealable. An order under rule 18 of Order 41 is not appealable. An appeal lies from an order of refusal to re-admit an appeal. But no appeal is maintainable from an order re-admitting an appeal.⁸³ An appeal will lie from an order of refusal to re-hear an appeal. A second appeal is competent from a decree of the first appellate Court dismissing the cross-objections of a respondent.⁸⁴

A distinction has to be drawn between an order of remand under Or. 41, r. 23, and an order under r. 25, remitting issues for decision. An order under r. 25 does not amount to an 'order remanding a case,' within the meaning of Or. 43, r. 1 (u), and is there-

Remand
order under
Or. 41,
R. 23 and
R. 25.

⁷⁷ *Jadunath v. Murari Mohan*, 35 C.W.N. 296; A.I.R. 1931 Cal. 594.

⁷⁸ *Fatch Chand v. Amar Nath*, 145 I.C. 200; A.I.R. 1933 Lah. 216.

⁷⁹ *Brij Coomaree v. Ramrick*, 5 C.W.N. 781.

⁸⁰ *Ramchandra v. Balmukunda*, 29 Bom. 71.

⁸¹ *Tuljaram v. Alagappa*, 35 Mad. 1 (F.B.).

⁸² *Sant Singh v. Hari Datt*, 100 I.C. 76; *Parmanand v. Raj Devi*, 100 I.C. 23.

⁸³ *Gulab Kunwar v. Thakur Das*, 24 All. 464.

⁸⁴ *Ganapati v. Sitarama*, 10 Mad. 292.

fore not appealable.⁸⁵ A Court has inherent power to remand a case for trial although it does not fall within the purview of r. 23. The failure of the Judge in not mentioning the relevant section of the Code under which he purports to act cannot be availed of by the aggrieved party as giving him a right of appeal, unless he satisfies the higher Court that the order of remand was one which was intended to be passed under r. 23 and he cannot do so except by satisfying the Court that it was an order which could be passed under that rule. The onus is on the appellant to show that the order complained against is an order falling within the purview of r. 23. If he fails to satisfy the Court on that point, he fails to bring his case within the purview of Or. 43, r. 1 (u). But where the order complained against purports to be one under r. 23, an appeal filed against it is *prima facie* competent.⁸⁶ An appeal lies to the High Court from an order of remand by which the lower appellate Court has remanded the entire suit to the first Court for final decision. In the case of *Muhammad Ali Fakir v. Karam Ali Talukdar*,⁸⁷ the plaintiffs brought a suit for recovery of arrears of rent for two *jamās*, and the defence to the suit was that the landlord had dispossessed the defendant of a portion of the holding and that the rent should be suspended. The Munsif gave effect to the defence of the defendant and dismissed the plaintiffs' suit. The Subordinate Judge, on appeal, was of opinion that no case had been made for suspension of the entire rent but that there should be a proportionate abatement; and for that purpose he remanded the suit to the trial Court for re-admitting it under its original number and for determining what rent should be abated for the land from which the defendant had been dispossessed and then passing a decree in accordance with the

⁸⁵ *Bir Indra Bikram v. Raghubar*, 1935 O.W.N. 352: A.I.R. 1935 Oudh 333.

⁸⁶ *Khanu Chuhar v. Panjal Shah*, 27 S.L.R. 341: A.I.R. 1933 Sind 279 (F.B.).

⁸⁷ 38 C.W.N. 1202.

observations made in the judgment. Against that order of remand an appeal had been brought by the tenant defendant. A preliminary objection had been taken to the hearing of the appeal on the ground that the order could not have been passed properly under the provisions of Or. 41, r. 23 as the trial Court did decide the suit on a preliminary point. Consequently no appeal from the order of remand would lie to the High Court. Mitter, J., observed: "One decision has been cited which lays down that cases of this kind must be treated as cases in which a remand is made under the provisions of Or. 41, r. 25 of the Code of Civil Procedure as if the appeal was being kept in the file of an appellate Court and the appellate Court was merely setting aside the findings of the first Court on a particular issue which had been sent down. There is no doubt a decision of Page and Graham, JJ., to that effect in the case of *Jagat Hari Saha v. Medun Bardhan*.⁸⁸ We have examined that decision and we find on a review of all other authorities, *viz.*, *Basumati v. Taritbasini*,⁸⁹ *Prasanna v. Baidyanath*,⁹⁰ and *Kayem Biswas v. Bahadur Khan*,⁹¹ that the decision is one of the two cases which takes a view different from the view taken consistently by the several Benches of this Court which have held that although the provisions of Or. 41, r. 23 might not strictly apply where the Court of appeal has remanded the suit to the first Court which has been asked to determine finally the suit by the order of remand, an appeal to this Court is permissible under the provisions of Or. 43, r. 1 of the Code of Civil Procedure. We, therefore, do not think that there is any substance in the preliminary objection which must be overruled."

Where the lower appellate Court did not say anywhere in its judgment under what provisions of law it purported to pass an order of remand, the High Court

⁸⁸ 31 C.W.N. 878.

⁸⁹ 31 C.L.J. 354.

⁹⁰ 31 C.L.J. 360.

⁹¹ 42 C.L.J. 22.

refused to hold that the order was not passed under the provisions of Or. 41, r. 23 of the Civil Procedure Code. To hold otherwise would be to curtail the right to appeal which should not be done except upon very clear proof of circumstances justifying such curtailment.⁹² An order of remand under sec. 151 is appealable only when it amounts to a decree. Where the order of remand merely sets aside the decree of the trial Court and does not itself decide any of the points raised for determination and does not determine the rights of the parties with regard to any of the matters in controversy in the suit, it cannot amount to a decree and must be treated as an order; and no appeal would lie against it as a decree. The mere fact that the order reverses the decree of the trial Court and deprives the plaintiffs of the valuable right they had acquired thereunder would not make an order of remand a "decree" unless that order itself determines any of the points arising for determination in regard to the matters in controversy in the suit.⁹³ An appeal from an order of an appellate Court under Or. 41, r. 23 does lie in all cases except where absolutely no right of second appeal is given in the body of the Code or by any other law. The Legislature intended to put orders of remand exactly on the same footing as an appellate decree and to make them appealable on precisely the same grounds. If a mistake in deciding the question of custom can be corrected in an appeal from an appellate decree it is reasonable to hold that it can and ought to be corrected in an appeal from an order of remand also.⁹⁴ Under the provisions of Or. 41, when the appellate Court is of opinion that certain findings of fact are necessary for the proper disposal of an appeal, and that evidence should be led on these points the proper procedure is under rule 25, by which

⁹² *Umesh Narain v. Secy. of State*, A.I.R. 1925 Cal. 1157: 87 I.C. 575.

⁹³ *Permanand v. Bhon Lohar*, 6 Pat. 160: 7 P.L.T. 535: A.I.R. 1926 Pat. 457.

⁹⁴ *Mt. Umri v. Shah Mahomed*, 3 Lah. 218: A.I.R. 1922 Lah. 178 (F.B.).

the appellate Court may frame issues and refer them for trial to the Court whose decree is appealed from. It cannot act partly under rule 23, which only applies to the case of a suit which has been decided on a preliminary point, and partly under rule 25 by calling for further findings. An order remanding a case for giving parties an opportunity to adduce evidence on a certain point and disposal and at the same time setting aside the trial Court's decree dismissing the suit is technically wrong.⁹⁵ An order of an appellate Court setting aside an order of the Court of first instance rejecting a plaint and directing it to proceed with the trial of the suit on the merits is not an order under Or. 41, r. 23 and is not appealable under Or. 43, r. 1 of the Code of Civil Procedure.⁹⁶ An appeal against an order of remand passed by the Special Judge under the provisions of the Bengal Tenancy Act is incompetent.⁹⁷ Where the appellate Court decides the main point in a case and remands the case for disposal of the remaining issues the decision is not one on a preliminary point and thus the order is not appealable.⁹⁸ An appellate Court is entitled to remand a suit for rehearing on a question of jurisdiction although such question has not been raised by the parties in the pleadings.⁹⁹ Where the appellate Court remands the case on the finding that the lower Court has jumbled up the issues and apparently misconceived the real defence and has in fact misdirected itself *in limine* and that therefore there has never been any real trial of the case as the pleadings required it was held that the remand must be taken to be under Or. 41, r. 23, on a preliminary point. In the case of an order of

⁹⁵ *Annaji Ramchandra v. Dattatraya Deshpande*, 53 Bom. 335: 31 Bom.L.R. 208: A.I.R. 1929 Bom. 175.

⁹⁶ *Cotton Trading Syndicate Commission Agency v. Shiv Ram Das*, 108 I.C. 597.

⁹⁷ *Debi Prasad v. Official Trustee*, 37 C.L.J. 314: A.I.R. 1923 Cal. 333.

⁹⁸ *Ponangi Venkata Subbaraidu v. Zamindar of Nazvid*, 12 L.W. 667: 60 I.C. 609.

⁹⁹ *Baraik Ram Govind Singh v. Chowra Uraon*, A.I.R. 1938 Pat. 97.

remand, it must be presumed, unless the contrary is shown at the time when it is made, that it is one under Or. 41, r. 23. An order may be made under that rule and though it might be wrongly made, it would nevertheless be appealable.¹⁰⁰

Judicial decisions are not uniform as to the view whether the right of appeal against an order granting an application for review given by Order 43, rule (1) (w) is qualified and controlled by Order 47, rule 7 and whether an appeal against such an order can lie only on one or other of the three grounds specified therein. Even the same High Court has taken different views in different cases. In *Nritya Gopal Mitra v. Jotir Monjari Dasi* (30 C.W.N. 584), it has been held that an appeal is not limited to the grounds set out in Or. 47, r. 7. The same High Court has taken the contrary view in *Gaizaddy v. Saroj Kumar*, 32 C.W.N. 693. The Madras High Court has held that the provisions of Or. 43, r. 1 (w) are to be subject to the provisions of Or. 47, r. 7—*Shrinivasa v. Official Assignee*, 50 Mad. 891. The Bombay High Court has taken the view as adopted in 30 C.W.N. 584. The Lahore High Court has held that the powers of the appellate Court are limited by Or. 47, r. 7—*Bakhtan v. Gulam Hassan*, 9 Lah. 298. The Oudh Court also has taken the same view.—*Bankey Behari v. Abdul Rahaman*, 7 Luck. 350. In *Radhakrishna v. Beni Madhab*,¹⁰¹ the Calcutta High Court has held that it is open to the appellant to prefer an appeal from the order granting a review without taking any steps as regards the decree itself and in the appeal preferred by him, to contend that the order granting the review should be set aside and that the alterations made in the decree should be cancelled, leaving the original decree to stand as it was before the review was made. No separate appeal need be preferred from the final

¹⁰⁰ *Kulsoominissa v. Ram Prasad*, 44 All. 492; 20 A.L.J. 321; A.I.R. 1922 All. 226; 67 I.C. 713.

¹⁰¹ 36 C.W.N. 212; 55 C.L.J. 98; A.I.R. 1932 Cal. 552.

order or decree, after the original one was reviewed because if the order granting the review is set aside, all subsequent proceedings taken under that order are all to be regarded as having been set aside. No application for review lies against a decision in appeal under the Letters Patent.¹⁰² No second appeal lies from an order passed in appeal from order granting an application for review. In appealable cases the review application should be filed before the appeal is lodged.¹⁰³ The fact that the party could have appealed from an order which on the face of it is erroneous is no bar to an application for review. A person, who files a memorandum of review on the Original Side, as required by its Rules and Orders, takes a step which initiates proceedings for review, and by so doing applies for a review of the judgment within the meaning of Order 47, rule 1; and when that is done before an appeal is preferred, the Court is not deprived of the jurisdiction to entertain the application for review, on the ground that, when the application comes on to be dealt with, an appeal is pending.

No second appeal where review granted.

An order passed under sec. 144 of the Civil Procedure Code is a decree within the meaning of sec. 2 and as a decree it is appealable.¹⁰⁴ An order dismissing an application for a final decree in a mortgage suit is a decree and appealable as such.¹⁰⁵ An order dismissing an appeal with costs on account of the appellant having withdrawn the appeal is a decree and an appeal is maintainable.¹⁰⁶ An order directing the removal of party's name 'from the array of parties' is in substance although not in form a decree and an

¹⁰² *Inder Mahtan v. Ramkrishen*, 12 P.L.T. 652: 134 I.C. 630.

¹⁰³ *Secy. of State v. Hindusthan Co-operative Insurance Society*, 36 C.W.N. 40: A.I.R. 1932 Cal. 171.

¹⁰⁴ *Khurshed Ali v. Ghulam Mustapha*, 1935 A.W.R. 967: 158 I.C. 908: A.I.R. 1935 All. 873.

¹⁰⁵ *Nathu Mal v. Ude Ram*, 32 P.L.R. 56: 137 I.C. 273: A.I.R. 1932 Lah. 214.

¹⁰⁶ *Jujisty v. Magata*, 56 Mad. 520: 64 M.L.J. 695: A.I.R. 1933 Mad. 442.

appeal is maintainable.¹⁰⁷ An order by the District Judge approving of the appointment of another trustee to fill a vacancy in pursuance of a scheme framed under sec. 92 of the Civil Procedure Code is not a decree and is not appealable.¹⁰⁸

Where the defendant was admittedly the *lakherajdar* and the only question of determination was whether the drainage cess should be paid direct to Government or through the plaintiff, it was held that no appeal lay under section 153 of the Bengal Tenancy Act against the decision in the case.¹⁰⁹ Where in a suit the landlord claimed enhancement of rent and the defendant denied the title of the landlord, it was held that an appeal was competent under sec. 153, B. T. Act.¹¹⁰ Where a Munsif who was empowered to exercise final jurisdiction under sec. 153 (b) of the Bengal Tenancy Act set aside a sale held in execution of a decree for rent at a claim not exceeding Rs. 50, on the ground that the processes of the sale were served and observed that this might be due to fraud on the part of the decree-holder but there was no finding of fraud which could be said to be independent of the irregularity of the proceedings in publishing and conducting the sale, and on appeal by the auction-purchaser the District Judge set aside the Munsif's decision and confirmed the sale, and against that order the judgment-debtor moved the High Court under sec. 115 of the Civil Procedure Code, it was held that the irregularity found by the Munsif was covered by the Explanation to sec. 153 of the Bengal Tenancy Act and no appeal lay to the District Judge from the decision of the Munsif under that section. The order of the District Judge was

B. T. Act.

¹⁰⁷ *Shair Ali v. Jagmohan*, 53 All. 466.

¹⁰⁸ *Ashan Ali v. Ibrar Husain*, 1931 A.L.J. 1071: A.I.R. 1931 All. 765: 133 I.C. 401.

¹⁰⁹ *Debendra Nath v. Atmananda*, 37 C.W.N. 920: 146 I.C. 335.

¹¹⁰ *Asutosh v. Ali Sheikh*, A.I.R. 1935 Cal. 763.

set aside as being without jurisdiction and that of the Munsif setting aside the sale was restored.¹¹¹

The special provisions made by the Explanation added to sec. 153 of the Bengal Tenancy Act with reference to cases of a very small value are intended to control the general provisions relating to appeals contained in sec. 174. So in the case of a decree for less than Rs. 50, an order refusing to set aside a sale on the ground of fraud which is not something different from irregularity of proceedings in publishing and conducting the sale is not appealable.¹¹² A question of irregularity of proceeding in publishing and conducting a sale is not a question relating to title to land and as such an appeal is not competent on that ground.¹¹³

Sec. 202 of the Indian Companies Act is wide enough to cover appeals against any order made in the matter of winding up of a company, provided such an order finally decides a dispute between the parties or deprives the appellant of a substantial and important right and is not a mere formal or interlocutory order. On an application by the Official Liquidator of a company under compulsory liquidation, an order was passed on 5th April, 1930, for issuing summonses for the examination of the Managing Agents under sec. 195 of the Companies Act with all the documents of the company under their custody and directing them to produce all the property and cash in Court. The Managing Agents appeared and raised certain objections to their being examined and to the Official Liquidator conducting their examination through a Counsel. The District Judge disallowed these objections by an order dated 21st June, 1930. An appeal against the order was presented on 14th July, 1930.

Indian
Companies
Act.

¹¹¹ Bindubashini v. Prabhat Chandra, 38 C.W.N. 1183.

¹¹² Benoy Bhusan v. Uma Charan, 36 C.W.N. 330: A.I.R. 1932 Cal. 490.

¹¹³ Bindu Bashini v. Prabhat Chandra, 60 C.L.J. 126: 38 C.W.N. 1183: A.I.R. 1935 Cal. 92.

It was held that the appeal was competent.¹¹⁴ There is no appeal under sec. 202 of the Companies Act from an order made on an application by the company under sec. 153 which is not in the course of being wound up.¹¹⁵ An order refusing an application for the inspection and copies of statements of persons examined under sec. 196 is appealable.¹¹⁶

Income-tax
Act.

Where the Income-tax Officer does not get proper material on which he can find out the true income of the assessee, it is in the interest of the State to guess the income of the assessee. The assessee cannot complain that he has been over taxed if owing to his own failure the officer is not able to do justice towards him, but where the proper materials are before the officer, he should utilise them and make an assessment under sec. 23 (3) of the Income-tax Act which is liable to be re-examined in appeal. When assessment is made more or less on matters which have been guessed out, there cannot be a proper appeal.¹¹⁷ Once an assessment has been made to the best of the Income-tax Officer's judgment on a net income under sec. 23 (4) of the Income-tax Act (1922), it follows that all expenses incidental to the business must be assumed to have been taken into consideration in arriving at the net income assessed. Such an assessment is final and conclusive and not open to appeal.¹¹⁸

The proviso to Sec. 30 of the Income-tax Act expressly declares that there shall be no appeal from an assessment to the best of the Income-tax Officer's judgment under sec. 23 (4) or under that sub-section read with sec. 27. Accordingly no question of law or fact arising from such assessment can be the subject

¹¹⁴ *Haribans v. National Sugar Mills*, 130 I.C. 407: A.I.R. 1931 Lah. 8.

¹¹⁵ *Viramgam Spinning and Manufacturing Co. v. Industrial Bank of Western India*, 27 Bom.L.R. 655: A.I.R. 1925 Bom. 442.

¹¹⁶ *De Souza v. Billimoria*, 96 I.C. 755.

¹¹⁷ *In the matter of Ganga Sagar of Khurja*, 53 All. 451.

¹¹⁸ *Government Mail Motor Service v. Commissioner of Income-tax*, 33 P.L.R. 160: 136 I.C. 706.

of consideration by the Assistant Commissioner for the simple reason that no appeal lies to him, with the result that the Assistant Commissioner can never have an occasion to pass in appeal an order under sec. 31 in relation to a best judgment assessment. The High Court can require the Commissioner to make a reference for decision by the High Court of a question of law only if it arises from an order under sec. 31. The High Court has no power to require the Commissioner to state a case for the decision by the High Court of questions of law arising from an assessment under sec. 23 (4) of the Income-tax Act¹¹⁹.

Income-tax
Act.

When there is ample evidence upon which the Income-tax Officer can find that there was no sufficient cause preventing the assessee from producing his account books requisitioned under sec. 22 (2) of the Income-tax Act and it appears that upon ground he had refused to cancel the assessment made under sec. 23 (4) of the Act and his order was upheld by the Assistant Commissioner on appeal for the same reason, there is no question of law arising under the circumstances for the purposes of sec. 66 (2) of the Income-tax Act.¹²⁰ The decision of the Income-tax Officer under sec. 27 of the Income-tax Act that no sufficient cause for non-submission of a return was shown by the assessee, is essentially a question of fact and not of law that can be referred to the High Court¹²¹. Whether a debt is wholly or partly and to what extent bad or irrecoverable is in every case (and whether the debtor is a human being or a joint stock company or other entity) is a question of fact to be decided by the proper tribunal upon a consideration of the relevant facts of the case¹²². But the conclusions of the

¹¹⁹ *In the matter of Jot Sher Singh*, 56 All. 933.

¹²⁰ *Commissioner of Income-tax v. A. K. R. P. L. A. Chettyar Firm*, 9 Rang. 21: A.I.R. 1931 Rang. 97.

¹²¹ *Nanneh Mal v. Commissioner of Income-tax*, 16 Lah. 462: 36 P.L.R. 198: A.I.R. 1934 Lah. 983.

¹²² *Dinshaw v. Commissioner of Income-tax*, 61 I.A. 318: 58 Bom. 579: 36 Bom.L.R. 855: 38 C.W.N. 1129: 60 C.L.J. 63: 67 M.L.J. 213: 150 I.C. 806: A.I.R. 1934 P.C. 180.

appropriate tribunal must be based on relevant and admissible evidence, and the question whether there is such evidence to support the conclusions arrived at by the Income-tax authorities is a question of law open to consideration by the High Court¹²³.

The Court has no jurisdiction to alter or modify a scheme sanctioned under sec. 153 of the Indian Companies Act (VII of 1913) without the consent of those agreeing to it. The remedy of any person aggrieved by the sanction is to prefer an appeal against the order sanctioning the scheme under sec. 202 of the Act¹²⁴. An objection by the judgment-debtor that the decree has been superseded by the scheme sanctioned is an objection under sec. 47 of the Civil Procedure Code and it is not an adjustment within the meaning of Order 21, rule 2 and does not require to be certified or recorded in order that the executing Court may recognise the same¹²⁵. When the question whether a creditor is bound by a scheme sanctioned under sec. 153 of the Companies Act comes up before the executing Court on an objection by the debtor company, that Court has to consider only two questions; namely, whether the execution is affected by the terms of the scheme as sanctioned and whether the order sanctioning the scheme was passed with jurisdiction. Questions whether notice of the meeting was served upon the particular decree-holder and whether separate meetings for different classes of creditors were held are questions of irregularity, not of jurisdiction. They are to be raised at the time sanctioning the scheme, or thereafter, to the Court sanctioning the scheme¹²⁶.

¹²³ Commissioner of Income-tax *v.* Chitnavis, 59 I.A. 290: 34 Bom.L.R. 1071: 36 C.W.N. 797: 55 C.L.J. 575: 137 I.C. 772: A.I.R. 1932 P.C. 178: 63 M.L.J. 361: Hukam Chand *v.* Commissioner of Income-tax, 37 P.L.R. 497: A.I.R. 1935 Lah. 637.

¹²⁴ Mihirendra *v.* Brahmanberia Loan Co., 61 Cal. 913: 38 C.W.N. 920.

¹²⁵ Mahiganj Loan Office *v.* Behari Lal, 41 C.W.N. 406.

¹²⁶ Mahiganj Loan Office *v.* Behari Lal, 41 C.W.N. 952: 65 C.L.J. 367: A.I.R. 1937 Cal. 507.

In view of the provisions of sec. 159 (2) of the Indian Companies Act and of the definition of the term "contributory" in sec. 158 of the Act, a suit to enforce the liability of a share-holder for the balance due on his share is not cognizable by the Court of Small Causes and so a second appeal is competent, even though the amount claimed is less than Rs. 500¹²⁷. A suit by a company for recovery of arrears of allotment money due on shares allotted is, according to the Punjab High Court, cognizable by a Court of Small Causes; and so an appeal against the decision does not lie¹²⁸.

An appeal may be made to an Appellate Officer B. A. D. Act. against any decision or order of a Board under the Bengal Agricultural Debtors Act (Bengal Act VII of 1936) or of a Certificate Officer under subsection (2) of section 28 or section 29; any award; the grant of a certificate under section 21; or any failure on the part of a Board to perform its functions under the Act or any abuse by a Board of its powers. The period of limitation of such appeal is thirty days from the date of the decision, order, award or certificate. The orders of the Appellate Officer shall be final, and no provision has been made in the Act for an appeal against the decision of the Appellate Officer appointed under that Act.

The words "suit or proceeding" in section 70 (1) Bengal Wakf Act. of the Bengal Wakf Act do not include an appeal. Accordingly, and also having regard to section 83, cls. (a) and (b) of the Act, the Commissioner of Wakfs is not entitled under section 70 (4) to question an order appointing a receiver made in an appeal pending at the date when the Bengal Wakf Act came into

¹²⁷ *Pabna Dhanabhandar Co. v. Foyezuddin Mia*, 59 Cal. 1186; 36 C.W.N. 589; A.I.R. 1932 Cal. 716.

¹²⁸ *People's Bank of Northern India v. Chanan Ram*, 34 P.L.R. 592; A.I.R. 1933 Lah. 657; 143 I.C. 723.

force, although the order as also the application therefor may have been after that date.¹²⁹

Indian
Succession
Act.

Where the security offered by the petitioner under sec. 291 of the Succession Act is accepted by the District Judge as sufficient, no appeal lies at the instance of the opposite party, on the ground that the security accepted by the District Judge is insufficient.¹³⁰ No appeal lies from an order passed by the District Judge under sec. 292 of the Succession Act, assigning an administration bond; but when the Judge passes an order which he has no authority to do, the High Court may interfere, treating the memorandum of appeal as an application for revision.¹³¹ The Rangoon High Court has held that an order assigning an administration bond is appealable.¹³² An order of a District Judge refusing to grant probate or administration is a decree within the meaning of sec. 2 of the Civil Procedure Code, and is appealable.¹³³ An order calling upon the applicant for probate to pay an enhanced court-fee is in effect a refusal of the application, and is appealable.¹³⁴ An appeal is competent from the order of the District Judge granting probate or letters of administration.¹³⁵ An appeal lies under the Letters Patent from the judgment of a single Judge in appeal from an order of a District Judge granting probate of a will.¹³⁶ An order revoking probate, if security is not furnished, is appealable.¹³⁷

No appeal lies from an order refusing to make a person, who opposes probate, a party-defendant to an

¹²⁹ *Commissioner of Wakfs v. Mahmuda Bibi*, 40 C.W.N. 816.

¹³⁰ *Lucas v. Lucas*, 20 Cal. 245.

¹³¹ *Kalimuddin v. Meharui*, 39 Cal. 563; 16 C.W.N. 662.

¹³² *U Po Hint v. Maung Bo Gyi*, A.I.R. 1929 Rang. 109.

¹³³ *Mountstephens v. Orme*, 35 All. 448.

¹³⁴ *Swarnamoyi v. Secy. of State*, 20 C.W.N. 472; 30 I.C. 394.

¹³⁵ *Arthur Lane v. Hedayatulla*, 1895 A.W.N. 127.

¹³⁶ *Umrao v. Brindaban*, 17 All. 475; *Chotoo v. Lachmi*, A.I.R. 1930 Pat. 354; 125 I.C. 769.

¹³⁷ *Shahabuddin v. Fazal Din*, 52 P.R. 1902.

application for probate.¹³⁸ No appeal lies *merely* from an order refusing a caveator to oppose a grant.¹³⁹ But an appeal will lie from an order granting a probate and refusing the caveator to contest the grant on the ground that he had no *locus standi*.¹⁴⁰ No appeal lies from an order deciding that a person has *locus standi* to oppose a probate.¹⁴¹ No appeal lies from an order calling upon the executor to furnish security.¹⁴²

An appeal lies from an order granting a succession certificate.¹⁴³ So also an order refusing to grant a certificate is appealable.¹⁴⁴ The High Court of Calcutta has held that an order refusing an extension of the succession certificate is tantamount to an order refusing to grant a certificate and is appealable.¹⁴⁵ An appeal lies against an order refusing to revoke a succession certificate, in the same way as an appeal lies against an order revoking a certificate.¹⁴⁶ But no appeal lies from an order which is not a "final" order. An order for the appointment of a receiver for the collection of debts, pending the decision of the proceeding for grant of certificate, is only a provisional order and is not appealable.¹⁴⁷ No appeal will lie from interlocutory orders passed during the pendency of the

¹³⁸ *Khettramoni v. Shyama Charan*, 21 Cal. 539.

¹³⁹ *Prasad Narain v. Dulhin Genda*, 18 C.L.J. 612; 22 I.C. 276; *Indu Bala v. Panchu Moni*, 19 C.W.N. 1169; 21 C.L.J. 292; 28 I.C. 578.

¹⁴⁰ *Nabin Chandra v. Nibaran*, 59 Cal. 1308; 36 C.W.N. 635; A.I.R. 1932 Cal. 734.

¹⁴¹ *Lakhi Narain v. Multan Chand*, 16 C.W.N. 1099; 15 I.C. 686; *Monoranjan v. Bijoy*, A.I.R. 1926 Cal. 180; but such an order is open to revision—*Radha Raman v. Gopal*, 24 C.W.N. 316; 56 I.C. 122.

¹⁴² *Monmohini v. Taramoni*, A.I.R. 1929 Cal. 733.

¹⁴³ *Bindo v. Radhe Lal*, 42 All. 512.

¹⁴⁴ *Gujri v. Nata Singh*, 117 P.R. 1881; *Baga Singh v. Khera*, 58 P.R. 1883; *Muzaffar v. Rahim*, 78 P.R. 1886. The contrary view taken by the Full Bench in *Ram Chand v. Rukman*, 103 P.R. 1888, which was decided under Act XXVII of 1860, is no longer good law.

¹⁴⁵ *Manchharam v. Kalidas*, 19 Bom. 821.

¹⁴⁶ *Radha Raman v. Gopal*, 27 C.W.N. 947 (in this case 25 Mad. 634 was distinguished).

¹⁴⁷ *Kanhaiya v. Kanhaiya Lal*, 46 All. 372.

proceeding for grant of certificate until the Court actually grants or refuses the certificate.¹⁴³

The appeal that has been provided for in sec. 384 (1) of the Succession Act is the first appeal to the High Court from the order of a District Judge granting, refusing or revoking a certificate. No second appeal lies from an order passed by the District Judge in appeal.

Provincial
Insolvency
Act.

The right of appeal under the Provincial Insolvency Act is strictly limited by the provisions of sec. 75 and there can be no appeal from a decision of a District Judge passed in an appeal from a decision of a subordinate Court unless the latter is one under sec. 4 of the Act.¹⁴⁹ An insolvent who had been granted a conditional discharge appealed to the District Judge but he impleaded only the creditors and not the Official Receiver. An objection on the ground of non-joinder was taken but the Court while modifying the order held that the non-joinder was a mere irregularity. Against that order both the creditor and the insolvent preferred appeals. It was held that the order under appeal was not covered by sec. 4 and that no second appeal lay.¹⁵⁰ An order of the District Court dismissing an appeal against an order of the Court of first instance exercising insolvency jurisdiction and adjudging a person as an insolvent is final and no second appeal lies.¹⁵¹ An appeal under sec. 75 of the Provincial Insolvency Act can lie only on grounds similar to those specified under sec. 100 (1) of the Civil Procedure Code. The decision of the lower

¹⁴³ *Nanhu v. Gulabo*, 26 All. 173 (in this case 25 Cal. 320 and 20 Mad. 442 were distinguished); *Devkore v. Lalchand*, 19 Bom. 790; *Bhagwani v. Manni Lal*, 13 All. 214; *In re Paddo Sundari*, 3 All. 304; *Jasoda v. Sujanmal*, 63 I.C. 846; *Kunjnni v. Kongathil*, 1910 M.W.N. 265; 6 I.C. 599. *See for contrary view*, *Radha Rani v. Brindaban*, 25 Cal. 320 (dissenting from 13 All. 214); *Ariya v. Thangammal*, 20 Mad. 442; *Biri v. Barkhurdar*, 139 P.R. 1908.

¹⁴⁹ *David v. Alagappa*, A.I.R. 1935 Mad. 432.

¹⁵⁰ *Gopal v. Official Receiver*, 132 I.C. 526; A.I.R. 1931 Lah. 647.

¹⁵¹ *Allah Diya v. Kunj Bihari*, I.R. 1932 Lah. 645.

Courts based on findings of fact cannot be assailed under sec. 75.¹⁵² A first appeal from an order of an Assistant District Court passed in its insolvency jurisdiction, lies to the District Court and not to the High Court.¹⁵³ A creditor whose application for prosecuting an insolvent for an offence under sec. 69 was rejected cannot prefer an appeal against the order as he is not a person aggrieved by it.¹⁵⁴ No appeal lies from an order refusing to frame specific issues as required by the insolvent.¹⁵⁵ No appeal lies from an order refusing to direct a receiver of mortgaged properties appointed in a mortgage suit, to surrender possession to a receiver-in-insolvency of the mortgagor's estate, subsequently appointed.¹⁵⁶ The creditors have *locus standi* to maintain an appeal against an order refusing to annul a mortgage by the insolvent on an application by the receiver.¹⁵⁷ An insolvent whose estate has vested in the Official Receiver is not entitled to appeal as a person aggrieved against the order of the District Judge passed in insolvency.¹⁵⁸

The decree or order of the Small Cause Court is final and is not subject to appeal. The language in sec. 25 of the Provincial Small Cause Courts Act states that the High Court may satisfy itself that the decree or order passed by the Small Cause Court was according to law. The expression "according to law" is parallel to language in sec. 100 (1) (a) of the Civil Procedure Code, and limits the High Court in revision to grounds of law and it does not cover a

Provincial
S. C. C.
Act.

¹⁵² *Radha Krishna v. Official Receiver*, 59 Cal. 1135: 36 C.W.N. 492: 56 C.L.J. 446: A.I.R. 1932 Cal. 642: 139 I.C. 323.

¹⁵³ *Ah Fisaik v. Receiver*, 12 Rang. 352: 151 I.C. 790: A.I.R. 1934 Rang. 155.

¹⁵⁴ *Pur Singh v. Aladadkhan*, 141 I.C. 350: 28 N.L.R. 286.

¹⁵⁵ *Balmukand v. Kalyan Das*, 35 P.L.R. 155: A.I.R. 1934 Lah. 194.

¹⁵⁶ *Nrisinha Kumar v. Deb Prosanna*, 62 Cal. 483: 39 C.W.N. 384: A.I.R. 1935 Cal. 460.

¹⁵⁷ *Barkat v. Jewan Mal*, 154 I.C. 708.

¹⁵⁸ *Venkataramanayya v. Bangarayya*, 67 M.L.J. 942: 40 L.W. 864: A.I.R. 1935 Mad. 107.

revision on question of fact.¹⁵⁹ A Judge of the Small Cause Court must indicate in his judgment that he has applied a judicial mind to the case, because it is necessary for the High Court to satisfy itself that there has been a decision in accordance with law, and for that purpose it is necessary for the High Court to be satisfied that the Judge has come to his decision judicially and not arbitrarily.¹⁶⁰

¹⁵⁹ Mahadeo Prasad *v.* Dharam Nand, 1935 A.L.J. 396: A.I.R. 1935 All. 372.

¹⁶⁰ Ram Nath *v.* Salig Ram, 1933 A.L.J. 316: A.I.R. 1933 All. 339.

PART V.

APPEAL TO PRIVY COUNCIL.

SYNOPSIS.

- | | |
|--|--------------------------------------|
| 1. Final order. | 5. Valuation. |
| 2. Petition for leave to appeal. | 6. Point of valuation not |
| 3. Certificate as to fitness of
appeal. | measurable by money. |
| 4. Substantial question of law. | 7. Applicant to furnish
security. |

Section 109 of the Civil Procedure Code enacts that an appeal shall lie to His Majesty in Council from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction, from any decree or final order passed by a High Court in the exercise of original civil jurisdiction, and from any decree or order when the case is certified to be a fit one for appeal to His Majesty in Council provided the conditions required by the Civil Procedure Code and the Rules made by His Majesty in Council regarding appeals are complied with. The order against which an appeal should be directed must be a *final order*. An order is a final order when it comprises the decision of the High Court upon the cardinal issue in the suit, that issue being one which goes to the foundation of the suit and one which can never, while this decision stands, be disputed again—*U Nyo v. Ma Pwa Thin* (10 Rang. 335: 140 I.C. 420). Or, in other words, an order is final if it *finally* disposes of the rights of the parties and is “interlocutory” if it relates to a matter of procedure only. If the appellate Court has finally determined that the plaintiff has good and subsisting cause of action, and all that remains is to work out subsidiary questions consequent upon the final determination of the defendant’s liability, the order is in substance and effect a final order, because the order as made has finally determined the rights of the parties, and all that remains is to ascertain the quantum of those rights.

An order passed by the High Court remanding the proceedings to the trial Court to determine certain issues of fact and return the proceedings to the High Court is not a "final order", regard being had to the fact that before the plaintiff could succeed, it was incumbent on him to prove his case—*U Nyo v. Ma Pwa Thin* (10 Rang. 335: 140 I.C. 420). Ordinarily an order of remand does not purport finally to dispose of the rights of the parties. But if the effect of the order is that the Court has *finally determined the cardinal issue in the suit* and only subsidiary and subordinate issues remain to be decided, the order of remand is a final order and appealable as such. Where the only matter in issue was whether the will of a Chinese Buddhist woman, bequeathing property to charitable uses, was *pro tanto* null and void, by reason of sec. 118 of the Indian Succession Act, and the Court of appeal has held that the will was not governed by the Succession Act but by the personal law of Chinese Buddhists, the order is final, notwithstanding that there may be subordinate enquiries to make—*Tan Ma Shwe Zin v. Tan Ma Ngwe Zin* (10 Rang. 499: 141 I.C. 275). An order granting a review really does not finally dispose of any case but reopens the decree that was originally passed by the Court and therefore an order for review is not a final order which is appealable—*Ambika Prasad v. Devi Dayal* (54 All. 401). An order refusing to appoint a receiver is not an order which finally determines the rights of the parties and is not appealable to the Privy Council—*Rajni Prasad v. Narasingha* (12 Pat. 723: 14 P.L.T. 302: 144 I.C. 457: A.I.R. 1933 Pat. 293; *Chundi Dutt v. Padmanund*, 22 Cal. 928). An order refusing leave to appeal in *forma pauperis* is not a final order and so not appealable to His Majesty in Council—*Aisha Bibi v. Noor Mahomed* (10 Rang. 504: A.I.R. 1932 Rang. 192).

Secs. 109 to 112 and Order XLV of the Civil Procedure Code deal with appeals to the King in Council. Whoever desires to appeal to His Majesty

in Council shall apply by petition to the Court whose decree is complained of. Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of sec. 110, or that it is otherwise a fit one for appeal to His Majesty in Council. The conditions that regulate the granting of certificates for leave to appeal have been clearly stated in the cases of *Banarasi Prasad v. Kashi Krishna Narain*,¹ *Radha Krishen Das v. Rai Krishen Chand*² and *Radhakrishna Ayyar v. Swaminatha Ayyar*.³ In the last mentioned case Lord Buckmaster observed: "The conditions that regulate the granting of certificates for leave to appeal have been clearly stated in the cases referred to by counsel for the respondent, *Banarasi Prasad v. Kashi Krishna Narain*¹ and *Radha Krishen Das v. Rai Krishen Chand*.² It is not necessary to examine them again for the principle which they establish is plain and cannot be questioned. That principle is this; that as an initial condition to appeal to His Majesty in Council, it is essential that the petitioners should satisfy the Court that the subject-matter of the suit is Rs. 10,000, and in addition that in certain cases there should be added some substantial question of law. This does not cover the whole grounds of appeal, because it is plain that there may be certain cases in which it is impossible to define in money value the exact character of the dispute; there are questions, as for example, those relating to religious rights and ceremonies, to caste and family rights, or such matters as the reduction of the capital of Companies as well as questions of wide public importance in which the subject-matter in dispute cannot be reduced into actual terms of money. Sub-sec. (c) of sec. 109 of the Civil Procedure Code contemplates that such a state of things

Certificate required.

Valuation must be Rs. 10,000.

¹ 28 I.A. 11: 23 All. 227: 5 C.W.N. 193.

² 28 I.A. 182: 5 C.W.N. 689.

³ 48 I.A. 31: 44 Mad. 293: 40 M.L.J. 229: 25 C.W.N. 630: 33 C.L.J. 277: A.I.R. 1921 P.C. 25: 60 I.C. 85.

exists, and r. 3 of Or. XLV regulates the procedure. It is there provided that the petition for appeal should state the grounds of appeal, and pray for a certificate that either as regards amount or value and nature, the case fulfils the requirements of sec. 110, or that it is otherwise, *i.e.*, under sec. 109, sub-sec. (c), a fit case for appeal to His Majesty in Council. When any certificate is granted under that Order it is in their Lordships' opinion of the utmost importance that the certificate should show clearly upon which ground it is based, and they regret to find that the certificate in this case is at least ambiguous. It runs in these terms: "It is hereby certified that, as regards the value of the subject-matter and the nature of the question involved, the case fulfils the requirements of secs. 109 and 110 of the Code of Civil Procedure, and that the case is a fit one for appeal to His Majesty in Council."

There is no indication in the certificate of what the nature of the question is that it is thought was involved in the hearing of this appeal, nor is there anything to show that the discretion conferred by sec. 109 (c) was invoked or was exercised. Their Lordships think that it should be brought to the attention of the Indian Courts that these certificates are of great consequence, that they seriously affect the rights of litigant parties, and that they ought to be given in such a form that it is impossible to mistake their meaning upon their face."

In deciding whether a certificate of fitness should be granted in a case governed by sec. 109, it is not enough to find that the order sought to be appealed against involves a substantial question of law. One of the tests usually applied to determine the fitness is to see whether the point involved is of great public or private importance. Another consideration which the Court must keep in view in granting the certificate is that litigation is not made oppressively expensive and the elucidation of the real issues in the case by a

trial of the suit is not unduly postponed or delayed.⁴ Cl. (c) of sec. 109 is clearly intended to meet special cases, such, for example, as those in which the point in dispute is not measurable by money though it may be of great public or private importance. Every question of law is not a substantial question of law. Where substantial rights are in no way affected by an order, there is *prima facie* no reason for granting a certificate that the case is a fit one for appeal to His Majesty in Council.⁵ The only fact that the case involves a substantial question of law of some difficulty is not a sufficient ground for certifying the case to be a *fit one* for appeal to His Majesty in Council.⁶ The special power of certifying a case to be a fit one for appeal to His Majesty in Council has been conferred on the High Court to meet particularly hard cases and that on such a special certificate having been given, the appeal becomes competent.⁷

Substantial
question
of law.

In special cases where the points in dispute may not be measurable in money and yet there may be substantial questions of law of sufficient public or private importance, an appeal to His Majesty in Council may be justified. Where the questions sought to be agitated in the appeal involve matters of principle, which not only affect the parties to the litigation but are likely to concern a large class of persons who are or may be in the same situation as the plaintiffs and in whose case the decision of the Privy Council is sure to be a guiding precedent, it is undoubtedly a fit case for appeal to His Majesty in Council. It should be borne in mind that the subject-matter of the suit or of the appeal is not necessarily identical with the subject-matter in dispute between the parties.⁸ A substantial question of law is one on which there may be

Point not
measurable
by money.

⁴ *Nrisingha v. Rajniti*, A.I.R. 1934 Pat. 564.

⁵ *Annamali v. Ramanathan*, 1935 M.W.N. 796: 69 M.L.J. 497: 160 I.C. 410.

⁶ *Ramanadhan v. Audinatha*, A.I.R. 1931 Mad. 642.

⁷ *Atma Ram v. Beni Prasad*, 56 All. 907.

⁸ *Sheopujan v. Bhagwat Prasad*, 54 All. 459.

a difference of opinion. The expression does not mean 'important' question of law. In order that a point may be a substantial question of law within the meaning of sec. 110, it should be such as to impress the High Court that it is debateable in view of the authorities or that the authorities themselves may require reconsideration. The mere fact that the Judges out of deference to the arguments exhibited patience in the hearing and care in the judgment does not establish that a point is substantial.⁹

The words 'substantial question of law' do not mean any alleged question of law, good, bad or indifferent. It is incumbent on the High Court in a case where it affirms the decree of the lower Court to be satisfied, before it burdens the Judicial Committee of the Privy Council, with the hearing of the appeal, that a question of law fairly open to argument, and not merely an alleged question of law, is involved in the appeal.¹⁰ Where the principles of law on a particular point are well settled and the only question is the application of these legal principles to a particular set of facts, it cannot be said that a substantial question of law arises within the meaning of sec. 100 of the Civil Procedure Code.¹¹

In the case of *Bengal Nagpur Railway Co., Ltd. v. Rattanji Ramji* (39 C.W.N. 52), it has been held that where on appeal to the High Court the decree of the lower Court is modified in favour of the applicant for leave to appeal to the Privy Council, the decree of the High Court is not a decree of affirmance of the lower Court decree. In such a case, it is not necessary for the applicant for leave to show that some substantial question of law is involved. In that case a suit was brought against the Bengal Railway Company,

⁹ *Alakh Narayan v. Chinna Jogudu* 142 I.C. 711: A.I.R. 1933 Mad. 221.

¹⁰ *M. C. Patail v. H. G. Arief*, 13 Rang. 741: A.I.R. 1936 Rang. 125.

¹¹ *Mt. Umrao Bibi v. Ram Kishen*, 13 Lah. 251: 32 P.L.R. 599: A.I.R. 1931 Lah. 753: 134 I.C. 790.

Limited, by the plaintiffs to recover a sum of Rs. 1,66,493 odd on account of the price of the work done by the plaintiffs as members of the joint Mitakshara family for a certain construction of the said railway. That suit was decreed in part by the trial Court. There were appeals and cross-appeals against that decision to the High Court. As a result of the appeal by the Railway Company, the decree against them was reduced to a certain extent. The contention of the Railway Company was that they were not liable for any amount claimed in the suit and, so the Railway Company was not satisfied with the reduction of the claim against them by the High Court. The Company had accordingly applied for leave to appeal to His Majesty in Council. Their Lordships of the High Court (Mitter and Edgley, JJ) observed in the judgment of the case as follows:—"One of the points for consideration which arise is as to whether the High Court judgment is to be regarded as a judgment of affirmance, seeing that the decision reducing the amount of claim against them to a certain extent was really a decision of affirmance of the judgment of the Court below with reference to the amount claimed, less the amount ultimately decreed by the High Court against the Company. The question really arose in view of a previous decision of this Court in the case of *Raja Sree Nath Ray v. The Secretary of State for India in Council* (8 C.W.N. 294), where it was held in circumstances somewhat similar to the present that the decree was really a decree of affirmance and leave could not be granted unless a substantial question of law arose with regard to the application. That case has been considered by Sir George Rankin, Chief Justice, in the case of *Narendra Lal Das Chowdhury v. Gopendra Lal Das Chowdhury* (31 C.W.N. 572). The facts in *Raja Sree Nath's case* (8 C.W.N. 294) were that the lower Court Judge gave an award of compensation and the High Court increased that amount. The applicant desired that the said amount might be still further increased, and it was held that the two Courts were at one on the

only matter which was going to the Privy Council, *vis.*, whether beyond the amount awarded by the High Court, the applicant had any claim. As has been pointed by Sir George Rankin, the Chief Justice, "that case is the origin of the doctrine that the language of sec. 100 of the Code is to be construed with reference to the subject-matter in appeal to the Privy Council." The reasoning of that case is that a decree which merely dismisses the appeal and confirms the decree of the immediate Court below is not the only decree of affirmance for the purpose of an appeal to the Privy Council. It has been held in a later decision of the Privy Council in the case of *Annapurna Bai v. Ruprao* (51 I.A. 319: 51 Cal. 969) that the rule which originated in the doctrine which we have just enunciated in the case of *Raja Sree Nath Ray* was erroneous. In view of this decision of the Privy Council, we are of opinion that the decree of this Court is not a decree of affirmance. Other authorities have been cited before us to which reference may be made. We have been referred to a decision of the Patna High Court of Chief Justice Sir Courtney-Terrel in the case of *Homeshwar Singh v. Kameswar Singh Bahadur* (144 I.C. 320) where the same view was taken. The learned Chief Justice made this pertinent observation which may be usefully quoted here. "It is immaterial whether the effect of the modification is in favour of the appellant or adds to his detriment, that is the wording of the section. Had the legislature chosen to lay down a criterion of the right of appeal depending upon whether the appellant would suffer by the modification or not, it would have said so."

Where the certificate is granted, the applicant shall furnish security within the time prescribed in rule 7 of Or. 45, for the costs of the respondent. The High Court has no jurisdiction to extend the time for furnishing security by an appellant to the Privy Council beyond the maximum period provided for in Or. 45, r. 7, that is to say, 90 days from the date of the decree plus sixty days or six weeks from the date of the

certificate, whichever is later. Rule 9 of Appendix II of the Privy Council Appeal Rules does not empower the High Court to grant such extension.¹²

The word "judgment" in Or. 45, r. 4, refers to the judgment appealed against. Suits dealt with by separate judgments by the High Court cannot be consolidated although they were dealt by one judgment by the first Court. The important thing is that the judgment which their Lordships have to consider and from which an appeal is brought should be the same judgment in the consolidated appeals and not that they should have in the same case or in the same appeal to consider the effect of several separate judgments of the High Court.¹³ A sale deed was executed by four persons, each of whom took a separate document by which he was given an option of re-purchase. The plaintiff was one of these four persons and he brought a suit for specific performance of the agreement evidenced by the document passed in his favour. He also brought a separate suit as heir of one of the other parties, in whose favour a similar document had been passed. In the trial Court the evidence in both suits was taken in the suit brought by the plaintiff in his own right and the parties agreed to treat the evidence in that suit as evidence in the second. In the trial Court as well as the appellate Court, judgments were separate, but one was delivered with reference to the other, so far as the point to be raised before the Privy Council was concerned. It was held that the suits were decided by the same judgment within the meaning of Or. 45, r. 4.¹⁴ Two separate

Judgment.

¹² *Raj Kumar v. Shamlal*, 39 C.W.N. 651; *Poornananthachi v. Gopalaswami*, 55 Mad. 835; 62 M.L.J. 665; 35 L.W. 679; A.I.R. 1932 Mad. 484; 138 I.C. 663; *Munna Lal v. Gajraj*, 159 I.C. 232; A.I.R. 1935 Lah. 733; *Bahadur Lal v. Judges of Allahabad High Court*, 55 All. 432 (F.B.).

¹³ *Dookinandan v. Narsingh*, 2 P.L.T. 157; A.I.R. 1921 Pat. 97.

¹⁴ *Jivangiri v. Gajanan*, 50 Bom. 753; 28 Bom.L.R. 1437; A.I.R. 1927 Bom. 19.

suits were filed for possession of two separate plots of land, the valuation being Rs. 7,800 and Rs. 6,500 respectively. The basis of the alleged title in the two suits was totally different. Both were tried in the same Court and were between the same parties and with the consent of the parties both cases were consolidated. The suits came up for hearing on same days, the evidence was recorded on same days and arguments were heard on the same day. They were disposed of by one single judgment, but separate issues were mentioned and the two cases were dealt with separately. The decrees granted were also entirely separate. The Court in which the suits were filed had unlimited pecuniary jurisdiction and therefore no question of pecuniary valuation arose then. It was held that there had never been consolidation of the two suits for the purpose of pecuniary valuation and they could not be consolidated for the purposes of appeal to His Majesty in Council and that the applicant could press his petition for leave to appeal only in respect of one of the two suits.¹⁵

In order that an appellate decree of a High Court may come within the first clause of sec. 110 of the Civil Procedure Code, each of the two conditions laid down therein has to be separately satisfied. Where in a suit for a certain property including some promissory notes, the subject-matter as valued in the plaint with the said notes taken at their face value is less than Rs. 10,000, but it reaches that sum with interest added up to the date of the first Court's decree, the first condition in the first clause of sec. 110 is not satisfied and no appeal lies to the Privy Council. The second clause does not apply to such a case.¹⁶ The question whether a decree or final order involves indirectly some claim or question to or respecting property of the value

¹⁵ Secy. of State *v.* Radha Devi, A.I.R. 1937 Pesh. 61: 169 I.C. 926.

¹⁶ Goudivada Mangamma *v.* Mahalakshamma, 57 I.A. 56: 53 Mad. 167: 58 M.L.J. 184: 34 C.W.N. 235: 51 C.L.J. 168: A.I.R. 1930 P.C. 44: 121 I.C. 513.

of Rs. 10,000 or upwards within the meaning of sec. 110 of the Civil Procedure Code must be decided with reference to actual circumstances at the time and not to circumstances which are remote and not, in particular, to a mere possibility, that future suits as to all or any part of the larger extent of the property worth Rs. 10,000 or more alleged to be concerned may be instituted at some time in the future.⁶⁷

Where past as well as future mesne profits are awarded in the decree of the lower Court but only the profits up to the institution of the suit are calculated, and calculation of future profits is postponed till the final decision of appeal, such future profits are not to be excluded in computing the valuation of the appeal under sec. 110, C. P. Code.¹⁸ A dispute arising out of a contract of sale was referred to arbitrators; the arbitrators were unable to agree and *ex parte* awards were made, one in favour of the petitioner for Rs. 81,000 and odd, the other in favour of the respondents for Rs. 3,900 and odd. Subsequently the High Court on application of the respondents, set aside the award in favour of the petitioner. The petitioner then brought a suit to set aside the award in favour of the respondents. The High Court in its original jurisdiction set it aside, but on appeal the appeal Court reversed and dismissed the suit. The petitioner applied for leave to appeal, but this was refused on the ground that the sum involved was neither directly nor indirectly of the value of Rs. 10,000. It was held that the petition was rightly refused.¹⁹ In calculating the valuation the value of the annuity which is sought to be recovered, and not the value of the property upon which that annuity is

¹⁸ Kumar Chandra Singh v. Gobinda Das, 42 C.W.N. 298; Mahomedali Isabhai v. Abdul Rahim, 32 Bom.L.R. 1189.

¹⁹ Imamuddin v. Kishundeo, 2 P.L.T. 675: 63 I.C. 402: A.I.R. 1921 Pat. 115.

²⁰ Udoy Chand v. Guzdar & Co., 52 I.A. 207: 52 Cal. 650: 30 C.W.N. 98: 41 C.L.J. 623: 49 M.L.J. 20: A.I.R. 1925 P.C. 159: 88 I.C. 445.

charged, is to be considered.²⁰ The costs of the suit are in no sense the subject-matter of the suit in the Court of first instance and ought not to be added to the value of the subject-matter in order to bring the valuation up to the appealable amount under the provisions of sec. 100, C. P. Code.²¹ In the case of an easement, the value of which falls much below Rs. 10,000, there is no right of appeal to the Privy Council although it affects property worth more than Rs. 10,000.²² Where the plaintiff, having had to value his claim at its actual or market-value for the purposes of court-fees, valued it in a particular way and at a figure which enabled him to begin in a Subordinate Judge's Court, he cannot go back upon that valuation for the purposes of a Privy Council appeal and set up a valuation of Rs. 10,000 or over, computed in a new way.²³

There has been a divergence of judicial opinion as to the question whether in a suit for partition of the estate of joint family the value of the subject-matter of the suit for purposes of sec. 110, C. P. Code, is the value of the whole estate or the value of the particular share in dispute. It has been held in a recent case of the Madras High Court [*Sukkira Goundan v. Palani Goundan*, (1938) 1 M.L.J. 728] that, in a suit for partition of the estate of joint family "the value of the subject-matter of the suit" for purposes of sec. 110, Civil Procedure Code, is not the value of the whole estate directed to be partitioned but only the value of the particular share in dispute. Where, therefore, the whole estate is valued at more than Rs. 10,000 but the share decreed to the plaintiff who is found to be a coparcener, is less than Rs. 10,000, the defendants are not entitled to leave to appeal under sec. 110, cl. (2)

²⁰ *Abid Hussain v. Ahmad Hussain*, 28 C.W.N. 289: 1923 M.W.N. 590: A.I.R. 1923 P.C. 102: 75 I.C. 502.

²¹ *E. I. Ry. Co. v. Badri Narayan*, 6 Pat. 444: 8 P.L.T. 714: A.I.R. 1927 Pat. 328: 104 I.C. 267.

²² *Manilal v. Banubin*, 23 Bom.L.R. 374: 63 I.C. 588: A.I.R. 1921 Bom. 266.

²³ *Hafez Mahomed Hossain v. Mansur Ali*, 38 C.W.N. 751: 59 C.L.J. 448: 153 I.C. 366: A.I.R. 1934 Cal. 809.

of the Civil Procedure Code as the decree does not involve any claim or question to or respecting property of the prescribed value. In that case Leach, C. J., and Madhavan Nair, J., preferred the opinion of the Bombay High Court to the opinions of Calcutta and Allahabad Courts. Leach, C. J., observed: "The learned advocate relies on the judgment of the Calcutta High Court in *Lala Bhugwat Sahay v. Rai Pashupath Nath Bose* (10 C.W.N. 564) and the judgment of the Allahabad High Court in *Muhammad Asghar v. Abida Begam* (54 All. 858). *Lala Bhugwat Sahat v. Rai Pashupati Nath Bose* (10 C.W.N. 564) was also a suit for the partition of a joint family estate, and Maclean, C. J., and Mookerjee, J., held that it was the whole estate which had to be looked at and not merely a particular share which one of the parties might claim. This construction was accepted by the Allahabad High Court in *Muhammad Asghar v. Abida Begam* (54 All. 858). The Bombay High Court, has, however, interpreted the second clause of S. 110 differently and this Court has agreed with it.

The opinion of the Bombay High Court is expressed in the case of *De Silva v. De Silva* (6 Bom.L.R. 403), which was decided by Jenkins, C. J. and Russel, J. It was there held that, where the relief is at less than Rs. 10,000 the value of the matter in dispute in appeal is not of the prescribed value. In such circumstances the decree itself does not involve any claim or question to or respecting property of the prescribed value and consequently the case does not fulfil the requirements of the section. The learned Chief Justice pointed out that, if the Court were to give effect to the contention that regard must be had only to the value of the whole estate, it would follow that, if the sole subject-matter in dispute, were an easement of trifling value, but affecting property worth Rs. 10,000 or more, a right to appeal to the Privy Council would exist, which would be given to the words of the section a meaning which was not justified.

This decision was followed by the Bombay High Court in *Manilal v. Banubai* (23 Bom.L.R. 374) and in *Nariman Rustomji v. Hasham Ismayal* (49 Bom. 149). It has been suggested in the course of the argument that the Bombay High Court gave expression to a contrary opinion in *Appaya v. Lakhamgodwda* (25 Bom.L.R. 77), but we do not regard the judgment there as repudiating the decision in *De Silva v. De Silva* (6 Bom.L.R. 403) which was again followed in *Nariman Rustomji v. Hasham Ismayal* (49 Bom. 149) I may add that *De Silva v. De Silva* (6 Bom.L.R. 403), was also followed by the Patna High Court in *Gosain Bhaunath Gir v. Bihari Lal* (4 Pat.L.J. 415, 24th January, 1938)."

Though the Judicial Committee has undoubtedly power to review the concurrent findings of facts arrived at by the lower Court, but, as a general rule, the Committee will not interfere with these findings. In the case of *Umrao Begum v. Irshad Husain* (21 I.A. 163; 21 Cal. 997), Lord Hobhouse observed: "The question is not only a question of fact, but it is one which embraces a great number of facts whose significance is best appreciated by those who are most familiar with Indian manners and customs. Their Lordships would be specially unwilling in such a case to depart from the general rule which forbids a fresh examination of facts for the purpose of disturbing concurrent findings by the lower Court." But where the findings of facts are to a great extent mixed up with law, they have been allowed to be disputed. The principle of concurrent findings of fact cannot be applied where the case is one of no evidence. Unless the Judicial Committee is clearly satisfied that there has been some miscarriage in the reception or in the appreciation of evidence, it will not disturb the findings of the Court below upon mere issues of fact—*Richardson v. Government* (1 W.R.P 47; *Cheynt Ram v. Nowbut Ram*, 7 M.I.A. 207).

PART VI.

POWERS OF APPELLATE COURT.

SYNOPSIS.

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|---|---|
| 1. Person interested in the result of appeal. | 3. Additional evidence. |
| 2. Admission of appeal. | 4. Powers of Appellate Court under Or. 41, R. 33. |

It is not competent to a Court of appeal to admit an appeal under Or. 41, r. 11, only on some specified grounds. Once the appeal is admitted, the whole appeal is open to discussion. At the same time, if at the time when the appeal is heard the appellate Court is informed that the appeal will be confined to certain specified grounds only and that the other grounds are abandoned, or if it is conceded on behalf of the appellant that the grounds other than those specified are not fit to be urged in appeal, there is nothing to prevent the Court from making a note of this fact.¹ If an appeal is severable it is open to the Judge, hearing the appeal under r. 11 of Or. 41, to dismiss it in part just as at the final hearing the Court may dismiss the appeal in part and allow in part. But it is not open to a Judge hearing an appeal to admit it and at the same time to restrict the grounds on which the appeal is to be heard.² If the appeal is not admitted, a simple order of dismissal may be passed and it is not until after admission and after hearing that a judgment is required.³ The judgment delivered on hearing an appeal under r. 11 by a Court subordinate to a High Court, must comply with the

¹ *Rekha Thakur v. Ramanandan*, 15 Pat. 96: 16 P.L.T. 803: A.I.R. 1936 Pat. 7.

² *Krishnaji v. Madhusa*, 58 Bom. 397: 36 Bom.L.R. 451: A.I.R. 1934 Bom. 207 (F.B.).

³ *Makhu Sahu v. Kamta Prasad*, 13 Pat. 540: 15 P.L.T. 293: 150 I.C. 817.

provisions of Or. 41, r. 31.⁴ The Court of appeal must give reasons for his decisions. Where the judgment contains no reasons it should be set aside in second appeal.⁵ The first appellate Court must give reasons for the judgment in order to enable the second appellate Court to form some opinion as to whether that judgment is correct or not. But in a case which is not subject to appeal, there is no such obligation.⁶

The powers of the Court, however ample they may be within the ambit of Or. 41, r. 20 and r. 33, cannot be used to the detriment or prejudice of the person against whom no appeal had been preferred.⁷ While it is, therefore, open to the appellate Court to vary the decree in favour of the plaintiffs who have not joined in the appeal filed by a co-plaintiff, it is not open to that Court to pass or modify any decree to the detriment of a person who is not a party to the appeal before it.⁸ The defendants who had not been impleaded in an appeal and against whom the appellant's right of appeal had become barred by limitation have acquired a valuable right which they should not be deprived of by the Court exercising its powers under Or. 41, r. 20 of the Code.⁹ A defendant against whom the suit has been dismissed by the trial Court and who has not been made a party to an appeal preferred against that decree is not a person "interested in the result of the appeal" within the meaning of Or. 41, r. 20. A suit was dismissed against A but decreed against B who alone appealed in the District Court. The appeal was allowed, and the suit was dismissed. The plaintiff filed an appeal in the High Court im-

Person
interested
in the
result of
appeal—
who is.

⁴ *Durga Thathera v. Narain*, 54 All. 220: A.I.R. 1931 All. 597 (F.B.).

⁵ *Dharam Dass v. Shankar*, 53 All. 528: A.I.R. 1931 All. 589.

⁶ *Sheik Arip v. Brajendra Kishore*, 59 C.L.J. 293: A.I.R. 1934 Cal. 26.

⁷ *Sakti Prasanna v. Nalini Ranjan*, 58 Cal. 923: A.I.R. 1931 Cal. 738.

⁸ *Ram Raj v. Ram Oudh*, 10 Luck. 243: 152 I.C. 304: 11 O.W.N. 1263: A.I.R. 1934 Oudh 496.

⁹ *Muniruddin v. Raisulnisa*, 140 I.C. 483: A.I.R. 1932 Oudh 288.

pleading A and B. It was held that the time for appeal against A having expired he could not be held to be a party interested in the appeal and no decree could be passed against A in the appeal. It was further held that an appeal against A could not directly lie in the High Court as the first appeal was available in the District Court.¹⁰

An appellate Court invited to admit additional evidence on appeal under Or. 41, r. 27 should do so with great caution. Such additional evidence may be admitted if the Court finds it necessary to enable it to pronounce judgment.¹¹ The principles to be applied in determining an application for leave to call further evidence was stated by Lord Chemsford in the case of *Shedden v. Patrick*¹² which was quoted with approval by Lord Justice Scrutton in the case of *Nash v. Rochford Rural District Council*.¹³ Lord Chemsford said: "It is an invariable rule in all the Courts, and one founded upon the clearest principles of reason and justice, that if evidence which either was in the possession of parties at the time of a trial, or by proper diligence might have been obtained, is either not produced, or has not been procured, and the case is decided adversely to the side to which the evidence was available, no opportunity for producing that evidence ought to be given by the granting of a new trial." Lord Justice Scrutton adds this comment: "That is the principle which was acted upon by this Court in the first application in the case of *H.M.S. Hazek*.¹⁴ I take the reason of it to be that in the interests of the State, litigation should come to an end at some time or other; and if you are to allow parties who have been beaten in a case to come to the

Additional
evidence.

¹⁰ *Nathuni v. Secy. of State*, 15 P.L.T. 813: A.I.R. 1934 Pat. 589.

¹¹ *Dwarka Ram v. Bakshi Parnaw Prasad*, 14 Pat. 595: 16 P.L.T. 613: A.I.R. 1935 Pat. 178.

¹² (1869) L.R. 1 H.L. 470, 545.

¹³ (1917) 1 K.B. 384, 393.

¹⁴ 28 T.L.R. 319.

Court and say, 'Now let us have another try; we have found some more evidence,' you will never finish litigation, and you will give great scope to the concoction of evidence."

The legitimate occasion for reception of additional evidence in the appellate stage is when on examining the evidence as it stands, some inherent *lacuna* or defect becomes apparent and not where a discovery is made outside the Court of fresh evidence and the application is made to import it. The defect may be pointed out by the party or the Court may be moved by the party to supply the defect but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands. Wherever the Court adopts this procedure, it is bound by r. 27 (2) to record its reasons for so doing and under r. 29 must specify the points to which the evidence is to be confined and record on its proceedings the points so specified.¹⁵ The provisions of sec. 107 as elucidated by Or. 41, r. 27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the Court of appeal. Under cl. (1) (b) of r. 27, additional evidence can be admitted only where the *appellate Court requires it*, i.e., finds it needful, to enable the Court to pronounce judgment, or for any other substantial cause. In either case it must be the *Court* that requires the additional evidence. The legitimate occasion for the exercise of this discretion by the appellate Court is not whenever before the appeal is heard a party applies to adduce fresh evidence, but on examining the evidence as it stands, some inherent *lacuna* or defect becomes apparent. This power should be very sparingly exercised and one requirement at least of any new evidence to be adduced is that it should have a direct and important bearing

¹⁵ Surendra Kumar v. Ganga Chandra, 61 Cal. 412: A.I.R. 1934 Cal. 627.

on a main issue in the case.¹⁶ No party is entitled as of right to fill up the gaps in its evidence under r. 27, and the mere negligence of a party in the trial Court is no excuse to let in evidence, which it failed to produce at the proper time. Rule 27 confers a prerogative on the Court and not on the party and it is only when the Court feels the necessity of additional evidence that it can be allowed to be produced.¹⁷ Where a party has had plenty of opportunity to examine a person as witness but fails to do so, the appellate Court may refuse to permit his examination as witness for the first time.¹⁸

In a suit on a promissory note the defendant pleaded alterations in the note. The suit was decreed. In appeal the Court obtained a written opinion as to the date of stamp affixed and used it for giving judgment in favour of the defendant. It was held that the opinion not having been formally proved and the plaintiff not having been given an opportunity of cross-examining the person giving the opinion thereon, it ought not to have been taken in evidence, and the finding of the Judge based upon the opinion contained in that letter must be discarded.¹⁹ During the trial of a suit, the trial Court disallowed certain evidence which the plaintiff desired to lead and also certain questions which were sought to be put to the witnesses. On appeal, the District Judge being of opinion that the evidence was wrongly excluded and the questions were wrongly disallowed, set aside the decree of the lower Court and remanded the case directing that the plaintiffs should be allowed to put in such evidence and that the suit should be tried after consideration of the

¹⁶ *Parsottam Thakur v. Lal Mohan Thakur*, 58 I.A. 254: 10 Pat. 654: 12 P.L.T. 683: 35 C.W.N. 786: 54 C.L.J. 1: 33 Bom.L.R. 1015: A.I.R. 1931 P.C. 143.

¹⁷ *Gurbakhsh v. Shankar*, 37 P.L.R. 759: 160 I.C. 800: A.I.R. 1936 Lah. 71.

¹⁸ *Sabitri v. Mrs. F. A. Savi*, 12 Pat. 359: A.I.R. 1933 Pat. 306.

¹⁹ *Ram Autar v. Baldeo*, 11 Pat. 782: A.I.R. 1932 Pat. 352.

evidence and rebutting evidence, if any, together with the evidence already on the record. It was held that the proper course was to proceed under rule 27 and not to set aside the decree and remand the suit under the inherent powers, and that the order setting aside the decree and remanding the suit was without jurisdiction.²⁰

The mere fact that the plaintiff might have been better advised to apply for a commission at the trial of the suit would not by itself warrant the issuing of a commission by the appellate Court, far less could it be held to justify the appellate Court in issuing a general order for the admission of such additional evidence as either of the parties might wish to produce when remanding the case to the lower Court.²¹ In the absence of any *lacuna* in the evidence as it stands on the record, the appellate Court will be going out of its way if it summons additional evidence in an appeal for the sole purpose of comparison of handwriting and signature in documents.²² But the High Court should not generally interfere in second appeal with the discretion of the lower appellate Court which under Or. 41, r. 27, requires the additional evidence and therefore admits it in order to enable it to pronounce judgment.²³ The appellant cannot in second appeal complain that the additional evidence received in the lower appellate Court giving the appellant an opportunity of establishing by production of further evidence that the *dakhilas* given by the landlord were genuine, was wrongly received by that Court.²⁴ A certified copy of a document not offered in evidence at the trial

²⁰ *Motibhai v. Ranchhodbhai*, 59 Bom. 430: 37 Bom.L.R. 241; A.I.R. 1935 Bom. 222: 156 I.C. 662.

²¹ *Gorakh Prasad v. Jhari Shanker*, 15 P.L.T. 142: A.I.R. 1934 Pat. 284.

²² *Barkat Ali v. Kartar Singh*, A.I.R. 1935 Lah. 555: 156 I.C. 253.

²³ *Gulam Samdani v. Badar Khan*, 16 P.L.T. 702: A.I.R. 1935 Pat. 470.

²⁴ *Durga Prasad v. Tarakeshwar*, 49 C.L.J. 478: A.I.R. 1929 Cal. 492: 120 I.C. 460.

Court on account of the point not having been disputed should be admitted in appeal.²⁵

It does constantly occur where some people appeal and others do not that the Court is put in a position of having to make impossible or contradictory or unworkable orders. Accordingly, it has been given power to make a decree in favour of persons who have not even approached it. This power may be exercised by the Court in favour of any of the parties who may not have filed any appeal or objection.²⁶ Where a suit comes before a Court upon appeal even though the appellant chooses to raise questions relating only to a part of the suit, the whole suit is before the appellate Court and it is competent for the appellate Court to exercise its powers under Or. 41, r. 32, in favour of parties to the suit who have not preferred an appeal.²⁷ Where a decree was passed for an injunction and some of the defendants preferred an appeal, it was held that the appellate Court had no jurisdiction to set aside the decree as against the non-appealing defendants.²⁸ In the case of *Dinanath Chandra v. Sm. Sudhanyamoni Dasi*,²⁹ which was a suit for enhancement of rent, the trial Court awarded enhancement at a certain rate and the defendants appealed but there was no appeal or cross-objection on behalf of the plaintiff and the lower appellate Court further enhanced the rent. It was held that the lower appellate Court had no power to do so under Or. 41, r. 33. Mr. Justice Nasim Ali in the judgment of the case observed: "The next point urged in support of the appeals is that the learned Judge had no jurisdiction under Or. 41, r. 33 of the C. P. Code to award

²⁵ *Jaharlal v. Chandra*, A.I.R. 1928 Cal. 265.

²⁶ *Abinash Chandra v. Dasarath*, 56 Cal. 598: 32 C.W.N. 1228: 48 C.L.J. 281: A.I.R. 1929 Cal. 123.

²⁷ *Athimoola v. Thirumala*, 65 M.L.J. 15: 37 L.W. 798: A.I.R. 1933 Mad. 529: 145 I.C. 289.

²⁸ *Aisha Bibi v. Allah Bakhsh*, 37 P.L.R. 351: 154 I.C. 919: A.I.R. 1934 Lah. 684.

²⁹ 39 C.W.N. 420: A.I.R. 1935 Cal. 458.

further enhancement to the landlord in the absence of any appeals or cross-objections on the part of the landlord claiming further enhancement. In my judgment this contention must prevail. The language used in Or. 41, r. 33 of the Code of Civil Procedure is no doubt very wide, but as has been pointed out by Jenkins, C. J., in the case of *Gangadhar Muradi v. Banabashi Padihari*,³⁰ that "the power contained in r. 33 should be limited to those cases where, as the result of the appellate Court's interference with the decree in favour of the appellants, further interference is required in order to adjust the rights of the parties in accordance with justice, equity and good conscience." It has also been pointed out by this Court in the case of *Abjal Majhi v. Intu Bepari*,³¹ that "r. 33 of Or. 41 of the Code should not be applied so as to enable a party litigant to ignore the other provisions of the Code or the provisions of statutes like those which relate to limitation or payment of court-fees." See also in this connection the case of *Akimannessa Bibi v. Bepin Behari Mitter*.³² The learned advocate for the respondent, however, placed reliance upon a decision of the Judicial Committee in the case of *Tricomdas Cooverji Bhoja v. Gopinath Jiu Thakur*.³³ The facts of the case, however, are entirely different from the facts of the present case. "My conclusion, therefore, is that the learned Judge had no jurisdiction to grant further enhancement in favour of the landlord as the latter did not want further enhancement either by filing independent appeals or by filing cross-objections."

Under r. 33 of Or. 41, the appellate Court has the power to make an order in favour of the respondent increasing the amount of alimony allowed by the lower Court, if that was necessary for doing complete justice, even though the respondent had not

³⁰ 22 C.L.J. 390.

³¹ 22 C.L.J. 394.

³² 22 C.L.J. 397.

³³ 44 I.A. 65: 44 Cal. 759: 21 C.W.N. 577.

filed any appeal or objection.³⁴ Though the power must be exercised with care and discretion, yet Or. 41, r. 33 is wide enough to enable an appellate Court to alter the decree of the trial Court in circumstances in which the party appealing can fairly be said to be entitled to equitable relief. The trial Court passed a decree against the principal who preferred an appeal. The evidence disclosed that it was the agent who was liable and the appellate Court gave a decree against the agent by exercising its power under r. 33. It appeared that the plaintiffs had stated their case as fairly as they could. It was held that the lower Court was justified in awarding relief under r. 33 and that in any case it was not a proper case for interference in second appeal.³⁵ R. 33 ought not to be applied to cases where there has been a distinct and separate decree against defendants who have not preferred any appeal.³⁶ It should be borne in mind that r. 33 authorises the appellate Court to pass a decree *in favour of* a party who has not been heard; it does not authorise the Court to pass a decree *against* a person who is not a party to the appeal. The powers under the rule cannot be exercised to the detriment or prejudice of a person who is not given a hearing.³⁷

Wide powers
of Court
under Or.
41, R. 33.

Powers not
to be exer-
cised against
person not
a party.

Or. 41, r. 33 is no doubt expressed in wide terms and must be applied with caution, so as not to enable a litigant to avoid the provisions of other statutes, such as the Limitation Act or the Court-fees Act. A test of its application is whether the questions which arise between the several sets of parties are so connected that one of them ought not to be allowed to re-open matters so far as he is concerned without an oppor-

³⁴ Iswarayya v. Swainam Iswarayya, 58 I.A. 350: 54 Mad. 774: 61 M.L.J. 367: 35 C.W.N. 1185: 34 L.W. 518: 33 Bom.L.R. 1402: A.I.R. 1931 P.C. 234.

³⁵ Khushi Ram v. Balak Ram, A.I.R. 1931 Lah. 370: 130 I.C. 774.

³⁶ Ram Prasad v. Mohan Mandal, A.I.R. 1934 Pat. 524.

³⁷ Kamalakanta v. Tamijuddin, 61 Cal. 919: A.I.R. 1935 Cal. 24: 154 I.C. 101.

Where Court
can grant
relief.

tunity allowed, in the interests of justice, to another to protect himself by urging his objections, even though they may be directed not against the appellant but against a co-respondent. But there is nothing to restrict the applicability of the rule to cases where the grounds of the judgment of the Court below are left undisturbed.³⁸ Where one of the two appeals from a decree is found to be time-barred, and the appellants in that appeal who happen to be respondents in the other appeal, seek under r. 33 whatever relief is given to the appellants in the second appeal, but the interests of the two sets of appellants are distinct and independent, such relief cannot be granted.³⁹ Where A claims a sum of money as due to him from X and Y and in a suit against both obtains a decree against X and X prefers an appeal impleading A and Y as respondents and the appellate Court decides in favour of X, the Court can pass a decree in favour of A against Y.⁴⁰

It is undesirable for an appellate Court to interfere with findings of fact of the trial Judge who sees and hears the witnesses and has an opportunity of noting their demeanour, especially in cases where the issue is a simple one and depends on the credit to be attached to one or other of the conflicting witnesses.⁴¹ In an appeal exclusively from the finding of fact arrived at by the trial Judge, where such decision is based on the trial Judge's opinion of the trustworthiness whom he has seen, the Court of appeal must, in order to reverse the decision, not merely entertain doubts whether the decision below is right but be convinced that it is wrong.⁴² It is open to an appellate

³⁸ *Mt. Chanda Bibi v. Mohanram*, 13 Pat. 200: 15 P.L.T. 42; A.I.R. 1934 Pat. 134.

³⁹ *Mt. Jiwan v. Punjab National Bank*, A.I.R. 1935 Lah. 889: 160 I.C. 897.

⁴⁰ *Majar Ali v. Nabin Chandra*, 35 C.W.N. 1079.

⁴¹ *Gourhari v. Shyama Sundari*, 38 C.W.N. 977: A.I.R. 1934 Cal. 824; *Heeralal v. Manasha Moyee*, 38 C.W.N. 438: A.I.R. 1934 Cal. 520.

⁴² *Dwarka Ram v. K. C. De & Co.*, 40 C.W.N. 515.

Court to differ from the Court which heard the evidence where it is manifest that the evidence accepted by such Court of first instance is contradictory or is so improbable as to be unbelievable or is for other sufficient reasons unworthy of acceptance. But such grounds must exist, if a conclusion as to credibility, opposed to that of the Judge who had the very great advantage of seeing and hearing the witnesses, is to be justified.

Or. 41, r. 19 does not exhaust the powers of the Court in a proper case to re-admit an appeal dismissed for default. Where an appeal was dismissed for default of payment of initial deposit in the High Court and a rule was issued upon an application filed on a court-fee of Rs. 2, the question arose whether such an application was competent. It was held that though Or. 41, r. 19 may not apply in its terms to such a case that rule read with sec. 151 of the Civil Procedure Code would enable an application of the present nature to be entertained and articles 4 and 5 of the Court-fees Act do not govern such an application.⁴³

Appellate Court may re-admit appeal dismissed for default.

⁴³ Dhayani v. Ishak, 134 I.C. 1169.

PART VII.

CROSS-OBJECTION.

SYNOPSIS.

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|---------------------------------|-----------------------|
| 1. Cross-objections—grounds of. | 3. Where not allowed. |
| 2. When allowed. | 4. Procedure. |
| | 5. Limitation. |

Grounds of Cross-objection.

"Cross-objection," in Or. 41, r. 22, indicates that it should be directed against the appellant, but it may be also taken against another respondent if there is community of interest between the appellant and the latter. But where the cross-objections are directed solely against a co-respondent whose case has nothing in common with that of the appellant but proceeds on the same grounds as those on which the appeal does, they are not maintainable. A cross-objection by one respondent against another cannot be permitted under Or. 41, r. 22 of the Civil Procedure Code where the effect of the same, if successful, cannot be adverse to the appellant to any extent.¹ One respondent cannot as a matter of right urge cross-objections against another respondent.² Where the interest of a respondent was really adverse to the appellant's though the latter unnecessarily in his memorandum of appeal took, as against the other respondents, grounds of appeal which were open not to the appellant but to the first-named respondent, it was held that the first-named respondent was competent to take the same grounds as cross-objection in the appeal, that being not a case of a purely lateral cross-objection between the respondents in which the appellant was not interested.³

¹ *Husain Yar Beg v. Radha Kishan*, 57 All. 580: A.I.R. 1935 All. 134.

² *Mt. Chanda Bibi v. Mohanram*, 13 Pat. 200: 15 P.L.R. 42: A.I.R. 1934 Pat. 134: 153 I.C. 412.

³ *Bhuban Mohan v. Co-Operative Hindusthan Bank*, 29 C.W.N. 784; *Co-Operative Hindusthan Bank v. Surendra Nath*, 59 Cal. 667: 36 C.W.N. 263: A.I.R. 1932 Cal. 524.

No cross-objection can be filed against a person who is not a party to the appeal.⁴ A defendant against whom the plaintiff's claim had been dismissed cannot be impleaded in cross-examination by him after the period of limitation, when the plaintiff's claim against him is entirely separate from the claim against other defendants who have appealed.⁵ Where the decree itself is merely a decree dismissing the plaintiff's suit, it is not open to the defendant to file cross-objection against it. Such cross-objection is not maintainable in law.⁶

Cross-objection not allowed against a person not a party to appeal.

In a suit for the opening up of a pathway against defendants who were alleged to have obstructed the plaintiff, the trial Court gave the plaintiff a decree against defendants 1 to 4 but dismissed the suit against defendant No. 5. On appeal by the defendants, the plaintiff presented a cross-appeal against defendant No. 5 who was also a respondent in the appeal. The appeal was dismissed but the cross-appeal allowed. It was held that in view of the finding that defendant No. 5 played a role in the obstruction of the passage the suit should have been decreed against him as well and the cross-appeal was properly allowed as there was a common ground against him along with the other defendants.⁷ An appeal was filed by two out of 96 defendants and the plaintiff filed cross-objections. The Court refused to entertain them on the ground that in any case the decree would remain in tact as against the 94 defendants who had not appealed. It was held that the procedure adopted was not warranted by law and that they should be heard on merits.⁸ Where the lower appellate Court dismisses the defendant's appeal and allows the plaintiff's cross-objection

Cross-objections where tenable.

⁴ *Rajendra v. Moheshata*, 53 Cal. 270: A.I.R. 1926 Cal. 533.

⁵ *Mt. Vithi v. Paiku Teli*, 29 N.L.R. 173: 144 I.C. 226.

⁶ *Ramparekha v. Ramjihari*, A.I.R. 1933 Pat. 690.

⁷ *Sudhansudhar v. Sasadhar*, 58 C.L.J. 534: A.I.R. 1934 Cal. 345.

⁸ *Dan Bahadur v. Gaya Din*, 11 O.W.N. 258: A.I.R. 1934 Oudh 182.

and decrees the claim to a large extent and the plaintiff, not satisfied with his partial success, comes up to the High Court in second appeal and the defendant, instead of filing any separate appeal, files a cross-objection to the plaintiff's appeal, the High Court is seized of the whole matter and has jurisdiction to dispose of the entire suit.⁹

The rejection of a memorandum of appeal as insufficiently stamped is not a dismissal for default and no cross-objections can be entertained or heard where the appeal is rejected.¹⁰ Where an appeal has abated, the respondent is not entitled to have his cross-objections heard and determined.¹¹ Where the appeal was admittedly barred by time, it was held that neither the appeal nor the cross-objections were properly before the Court and accordingly the Court had no power to proceed with the matter.¹² Where an appeal relating to the matter in cross-objections is dismissed under Or. 41, r. 11 of the Civil Procedure Code, cross-objections cannot be heard in the cross-appeal.¹³ The law does not permit a respondent, who has preferred an appeal, to file cross-objections.¹⁴ Where one of several defendants against whom a decree is passed has allowed the period for appealing to elapse, r. 22 of Or. 41 does not revive his right simply because a co-defendant had instituted an appeal against the plaintiff on entirely different grounds. The same principle would apply with equal force where the interest of the objector is identical with that of the appellant and he might have joined in the appeal.¹⁵ Though the main

⁹ *Ganganand v. Gobardhan*, 1935 A.L.J. 418: A.I.R. 1935 All. 404.

¹⁰ *Lajpatrai v. Lachman*, 46 P.W.R. 1921: 59 I.C. 795.

¹¹ *Murugappa v. Ponnuswami*, 44 Mad. 828: 41 M.L.J. 304: A.I.R. 1934 Mad. 405.

¹² *Gopal v. Muna Lal*, 4 Lah. 140: A.I.R. 1924 Lah. 43.

¹³ *Sourindra v. Nirmal Chandra*, 32 C.W.N. 863: A.I.R. 1928 Cal. 882.

¹⁴ *Mt. Tehe Kuar v. Amar Nath*, 17 P.W.R. 1923: A.I.R. 1925 Lah. 2.

¹⁵ *Muzafar Ali v. Bhagwati Prasad*, 66 I.C. 642: A.I.R. 1921 Oudh 176.

appeal from the Original Side of a High Court has been dismissed for default, a memorandum of objection filed by the respondent in the appeal can be treated as a substantive appeal.¹⁶ Where a person cannot prefer an independent appeal against an order, as nothing is decided therein against him, his mere addition as *pro forma* respondent in the appeal against the order would not entitle him to raise any cross-objection to the order.¹⁷

Where nothing is decided against him, *pro forma* defendant cannot raise cross-objection.

Cross-objections should be filed by the respondent within one month from the date of the service of notice of the appeal. The Court may extend the time if sufficient cause is shown for not filing them within time.¹⁸

Limitation.

¹⁶ Bhimasena *v.* Venugopal, 48 Mad. 631: A.I.R. 1925 Mad. 725; 48 M.L.J. 384.

¹⁷ Babu Singh *v.* Godawari, 118 I.C. 867: A.I.R. 1929 Nag. 361.

¹⁸ Sulleman *v.* Joosub, 14 Bom. 111.

PART VIII.

ABATEMENT OF APPEAL.

SYNOPSIS.

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| 1. Abatement of appeal when
takes place. | 2. Sufficient cause for setting
aside abatement. |
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Test of Abatement.

It is settled law that if a respondent dies and his representatives are not impleaded within time, the appeal abates automatically as against him on the expiry of the statutory period and it is not necessary for the Court to pass a formal order declaring that the appeal has abated. It is, however, open to the appellant to have the abatement set aside on a proper application under Or. 22, r. 9 of the C. P. Code.¹ The question whether an appeal can or cannot proceed in the absence of the legal representatives of one of the respondents who has died, must depend upon the nature of each case and it is impossible to lay down a general rule applicable to such cases. Each case must depend upon its own circumstances. It is true that so far as the law is concerned, the appeal abates *qua* the deceased respondent, but the question whether the partial abatement would lead to an abatement of the appeal in its entirety must depend upon general principles. Where a joint decree has been given in favour of the respondents, the entire appeal abates if the appellant fails to bring the legal representatives of a deceased respondent on the record, as otherwise the decision may result in two conflicting decisions with regard to the same subject-matter.² If the nature of the suit is such as to require the presence of all the parties interested in the subject-matter of litigation

¹ Ganga v. Gobind, 15 Lah. 879: 35 P.L.R. 457: 152 I.C. 227.

² Ram Jas v. Ram Lal, 1935 O.W.N. 297: A.I.R. 1936 Oudh 209.

and if the absence of any such party prevents the adjudication of the claims of the parties on record, the suit or appeal cannot proceed at all. Consequently it will abate in its entirety. Such for example are suits for pre-emption and suits for dissolution of partnership. It lies on the party in default to satisfy the Court that the nature of the suit is such as to permit of its progress notwithstanding the defect in the array of the parties.³ In a suit for possession and injunction against trespassers, the mere fact that one of the trespassers had died and his heirs have not been brought on the record does not make it impossible to pass a decree against the trespassers who are before the Court.⁴ A suit for partition cannot be proceeded with in the absence of the alleged co-sharers. The failure to implead the legal representatives of a deceased party will entail total abatement.⁵

The question whether an appeal abates in whole or in part depends on whether the interests of the respondents are or are not separately defined. If they are separable, the appeal will abate as regards the interest of the deceased respondent. If they are joint and inseparable, the appeal will abate *in toto*. A further test in this connection is this that, if a separate suit is maintainable against the co-defendants severally, the mere fact of their being impleaded in the same suit will not cause an appeal to abate as a whole.⁶ A plaintiff in a suit for damages arising out of a tortious act is not bound to join as defendant every person who is liable for the tort. That other persons also are liable for the act is no defence for those sued because the liability is joint and several. The decree in a suit wherein one of the tort-feasors sued died and his legal representative was not brought on the record

Where interests are joint and inseparable, appeal abates *in toto*.

³ Surajmal v. Pyarkhan, 134 I.C. 679: A.I.R. 1931 Nag. 184.

⁴ Shibban v. Allah Mehar, 3 A.W.R. 615: A.I.R. 1934 All. 716.

⁵ Mohan Devi v. Sundar Das, 35 P.L.R. 95: 147 I.C. 1187.

⁶ Karam Kham v. Mast Ali Khan, 28 P.L.R. 148: A.I.R. 1927 Lah. 851.

is a good decree against those who were living parties to it, as the suit does not abate as a whole but only against the particular defendant who died and whose legal representatives were not brought on the record.⁷ Where a decree is for joint possession without specification of shares and there is no mention in it of any specific share to which a co-plaintiff who dies pending the appeal is entitled, the appeal will abate as a whole if his legal representatives are not brought on record within the period of limitation prescribed for the purpose.⁸ Where in an appeal by a mortgagee one of the respondents, who is a puisne mortgagee, dies and his legal representative is not brought on record, the appeal abates only as against that person but not in its entirety.⁹ Where the plaintiffs are joint owners or co-mortgagees without any definition of their shares and a decree is passed in their favour, the defendant appealing from the decree must make all the plaintiffs respondents and if one of them dies pending the appeal and his legal representative is not substituted the appeal abates *in toto*.¹⁰ Where, subsequent to a preliminary decree for mesne profits obtained against fourteen defendants with joint and several liability, two of them died, it is not open to the plaintiff to proceed in appeal against the remaining defendants only without impleading the legal representatives of the deceased so as to enhance the amount payable by each and deprive them of the right of contribution against the estate of the deceased defendants.¹¹ An appeal does not become incompetent because the legal representatives of a deceased respondent are not impleaded, when such respondent is only a *pro forma* defendant, in respect of whom no decree either for

⁷ Gajo Singh v. Amrit Singh, 2 P.L.T. 234: A.I.R. 1921 Pat. 350.

⁸ Faujadar v. Kalu Khan, 148 I.C. 889.

⁹ Puniab and Sind Bank v. Ishar Singh, 149 I.C. 1060: A.I.R. 1933 Lah. 1001.

¹⁰ Nawab Khan v. Amir Chand, 33 P.L.R. 38.

¹¹ Maharajadhiraj Rameshwar Singh v. Ram Charan, 11 Pat. 538: 13 P.L.T. 711: A.I.R. 1932 Pat. 327: 140 I.C. 300.

or against has been passed.¹² Where there are numerous respondents some of whom have been allowed under Or. 1, r. 8 of the Civil Procedure Code to represent the other, the appeal does not abate if one of those persons who are represented by the others dies and the legal representative of the deceased is not brought on record within time; but the appeal would abate if any one of the persons appointed to represent the others dies and no substitution of his heirs and representatives is made within time.¹³ An appeal by an insolvent against an order refusing his application for discharge, on the objection of a creditor, abates wholly if the heirs of one of the creditors-respondents be not substituted within time, although the deceased creditor may not himself have raised any objection to the discharge. Such an appeal, however, does not abate by reason of the absence of the heirs of one of the creditors, if there be a receiver in insolvency appointed in the case and he be on the record representing all the parties concerned.¹⁴

An order declaring that the suit has abated because the legal representative of the deceased defendant had not been brought on the record in time is a decree and appealable as such, though no formal decree dismissing the suit is drawn up¹⁵. Where an appeal is filed against a dead person, no question of abatement arises. The Court may in such cases excuse time and permit the legal representatives to be impleaded¹⁶. It is quite open to a Court when an application for substitution is made and the Court finds that all the heirs of a deceased person have not come forward to apply to be substituted in his place, to refuse to make an order for substitution upon the ground that there are other

Order of
abatement
appealable.

¹² *Sundar Ali v. Nur Mamud*, 60 C.L.J. 225: A.I.R. 1935 Cal. 202: 155 I.C. 733.

¹³ *Afzalunnissa v. Fayazuddin*, 13 Lah. 195: 33 P.L.R. 302: 132 I.C. 657: A.I.R. 1931 Lah. 610.

¹⁴ *Jatindra Nath v. Katihar Oil Mills Ltd.*, 39 C.W.N. 1292.

¹⁵ *Barju v. Kunja Behari*, 10 Pat. 471: 133 I.C. 767.

¹⁶ *Meher Singh v. Labh Singh*, 33 P.L.R. 116: 138 I.C. 277.

Appeal—
when abates.

heirs who ought to have joined in the application. Where, however, some of the heirs make such an application disputing the right of the other persons to claim as heirs, it cannot be said that the Court cannot make an order for substitution in their favour.¹⁷ It is competent for one of several tenants to institute a suit under sec. 104-H of the Bengal Tenancy Act, for the purpose of getting a declaration that he was an occupancy *raiyat* and that the entry in a record of rights that he was a tenure-holder was wrong. Consequently, the failure to implead in time the legal representatives of one of the plaintiffs respondents does not have the effect of rendering the entire appeal bad.¹⁸ Where in a suit brought in a representative capacity, one of the plaintiffs dies during the pendency of the appeal by the defendants and no steps are taken to bring his legal representatives on the record, the appeal does not abate *in toto*.¹⁹

Where two independent appeals were filed, one by the plaintiff and the other by the second defendant, against a decree passed in a suit and the plaintiff having died during the pendency of the appeals his legal representatives were impleaded in the appeal preferred by him but they were not brought on the record in the appeal filed by the 2nd defendant. It was held that the joinder in the one appeal did not enure for the benefit of the other appeal as well and that the appeal preferred by the 2nd defendant consequently abated.²⁰ On the death of the defendant who is sued as an executor, the estate of the testator devolves on the residuary legatee, and if he is not brought on the record of the appeal within the period

¹⁷ *Maiyarjan Bibi v. Abdul Shek*, 37 C.W.N. 138: A.I.R. 1933 Cal. 498.

¹⁸ *Krishnabandhu v. Brajendra Kumar*, 58 Cal. 1341: A.I.R. 1932 Cal. 134.

¹⁹ *Ikram Khan v. Mirza Md. Baqar*, A.I.R. 1935 All. 106: 152 I.C. 817.

²⁰ *Sankaranarayana v. Laxmi Hengsu*, 60 M.L.J. 267: 130 I.C. 764.

of limitation prescribed by law, the appeal abates.²¹ Where three brothers who were members of a joint Hindu family obtained a decree declaring their title to *raiya* holding and for recovery of possession, and before the hearing of the appeal preferred by the defendant one of the brothers died but his heirs were not substituted in his place, it was held that the appeal was not maintainable.²² Where the suit was by the individual owners of a firm and a decree having been passed the defendants appealed and one of the plaintiffs-respondents died during the pendency of the appeal but his legal representatives were not impleaded in time, it was held that the decree being a joint one the appeal abated *in toto*.²³ Where one of several respondents to an appeal, who are joint tenants of a holding, dies pending the appeal, the omission to bring his legal representatives on record would cause the appeal to abate as a whole as against all the respondents, because they are joint tenants of one holding and their interests cannot be separated.²⁴ Where in a suit by the tenant under sec. 106 of the Bengal Tenancy Act a decree is passed and one of the co-sharer landlords prefers an appeal impleading the others as respondents and during the pendency of the appeal one of the respondents dies and his legal representatives are not impleaded in time, the entire suit abates and Or. 41, r. 33 has no application to the case.²⁵

Where a suit is brought against two defendants individually and not in the name of the firm and the final decree of the lower Court was in favour of the defendants jointly after the accounts were taken and there was nothing to show the interest of each of the defendants in it and during the pendency of the appeal,

²¹ Kalidas *v.* Jugal Kishore. 62 Cal. 998.

²² Harihar *v.* Brijanadan, A.I.R. 1933 Pat. 646: 147 I.C. 784.

²³ Shri Chand *v.* Bansidhar, 1932 A.L.J. 219: 135 I.C. 245.

²⁴ Ram Naresh *v.* Kailash, 1935 R.D. 5.

²⁵ Harendra Nath *v.* Dwijendra Nath, 37 C.W.N. 756: 58 C.L.J. 29: A.I.R. 1933 Cal. 787: 146 I.C. 831.

one of the respondents died and the appeal against him abated for not bringing his representatives on record, the entire appeal abated. The question of abatement must be decided by reference to the decree and it cannot be allowed to be urged that the two defendants in reality comprised a firm who were in partnership with the plaintiff and also acted as their agents.²⁶ Where one of the tort-feasors dies during the course of the suit and his legal representatives are not brought on the record within time, the suit can proceed without them, as the death of one tort-feasor cannot affect the case against another.²⁷ The Court has wide powers to set aside an abatement and these powers should be exercised somewhat liberally unless there is clear proof of laches. Where the plaintiff has had difficulties in keeping in touch with all his adversaries the Court condoned the delay.²⁸ There is a divergence of judicial opinion with regard to the point whether ignorance of the death of one of the respondents can be "sufficient cause" within the meaning of sec. 5 of the Limitation Act as to set aside the abatement. In *Lakshmi Chand v. Behari Lal*²⁹ the Allahabad High Court has held that ignorance of the death of one of the respondents, in the absence of any negligence or other act or omission for which the applicant can be held responsible, can be "sufficient cause" within the meaning of sec. 5 of the Limitation Act for setting aside the abatement. In *Pir Bakhsh v. Kidar Nath*,³⁰ the High Court of Lahore has held *per* Dalip Singh and Bhide, JJ.) that ignorance on the part of an applicant of the death of a deceased party is not "sufficient cause", and cannot be considered to be an adequate ground to excuse the delay in applying or to extend the time, under sec. 5 of the

Court has
wide powers
to set aside
abatement.

²⁶ *Chuni Lal v. Amin Chand*, 14 Lah. 543: 34 P.L.R. 11: A.I.R. 1933 Lah. 356.

²⁷ *Roda Mal v. Nighahia*, 36 P.L.R. 182: A.I.R. 1934 Lah. 941: 155 I.C. 869.

²⁸ *Hassomal v. Pir Bux*, 141 I.C. 299.

²⁹ 54 All. 280.

³⁰ 37 P.L.R. 400: 155 I.C. 610: A.I.R. 1935 Lah. 478.

Limitation Act. In *Chuni Lal Tulsi Ram v. Amin Chand*,³¹ the same view was taken by Addison and Agha Haidar, JJ. In *Alabhai Vajsurbhai v. Bhura Bhaya*³² the Bombay High Court excused the delay which was due to ignorance of the fact of death of one of the respondents, having regard to the fact that there being numerous parties in the litigation the plaintiff could not properly keep a more efficient watch on them.

No general or inflexible canon of law can be laid down for the guidance of Courts in the matter of deciding what should be deemed "sufficient cause" within the meaning of sec. 5 of the Limitation Act for the purpose of condoning the delay, but each case should be considered according to its own peculiar facts and circumstances. Though ordinarily a mere plea of ignorance of the death of the opposite party is not a sufficient ground for setting aside an order of abatement, but there may be circumstances in which such ignorance might be excusable.³³

Application
under S. 5,
Limitation
Act.

An application to bring on record the legal representative of a deceased respondent in an appeal was filed by the appellant four days beyond the period of 90 days prescribed for such application. The reason for the delay was alleged to be that the appellant was not in a position to know the exact date on which the deceased died. It was held that it was a fit case in which time should be extended under Or. 22, r. 9 of the Civil Procedure Code.³⁴ Mere ignorance of law that an application is necessary to be filed within 90 days for substituting the heirs and legal representatives

Ignorance of
law is not
'sufficient
cause.'

³¹ 14 Lah. 543: 34 P.L.R. 11: 142 I.C. 649: A.I.R. 1933 Lah. 356.

³² I.L.R. 1937 Bom. 602: 39 Bom.L.R. 444: A.I.R. 1937 Bom. 401: 171 I.C. 536.

³³ Sarju Prasad v. Sarju Baksh, 1935 O.W.N. 371.

³⁴ Sham Das v. Mahabir, 36 P.L.R. 129: A.I.R. 1933 Lah. 916: 149 I.C. 1187.

of a deceased respondent, is not "sufficient cause" for excusing the delay.³⁵ The mere fact that the representative of a deceased person happens to be already a party on the record in his own right does not dispense with an application for substitution.³⁶

³⁵ Chuni Lal Tulsi Ram *v.* Amin Chand, 34 P.L.R. 11: 142 I.C. 649: A.I.R. 1933 Lah. 356: Karam Chand *v.* Lehna, 204 P.L.R. 1912: 15 I.C. 708.

³⁶ Romesh Chandra *v.* Anthony, 29 I.C. 470.

PART IX

NEW PLEA IN APPEAL.

SYNOPSIS.

- | | |
|--|---|
| 1. Point not raised in Courts below cannot be raised in second appeal. | 3. Point of law based upon determination of fact afresh not allowed in second appeal. |
| 2. Pure law point may be raised. | 4. Point not relied upon in pleadings not to be raised in second appeal. |

A new point which is not raised in either of the Courts below cannot, strictly speaking, be raised in second appeal. A point not taken in the Court below, whether the omission was by the appellant in that Court or whether the respondent failed to support his decree by taking the point, will not be permitted to be raised except possibly where the point may be described as involving a question of public policy, *e.g.*, (i) involving jurisdiction, (ii) involving the principle of *res judicata*, (iii) where the decision of the point would prevent future litigation. In these cases the point will be allowed to be argued only if it can be decided from the materials before the Court and does not involve the taking of further evidence or the sending of the case for any issue, back to the lower Court, or a decision of a question of fact. It is not a ground for permitting a new point to be argued merely (i) that it was omitted by an oversight in the Court below, (ii) or that the materials are all on record and that the answer to the point is plain.¹ A pure question of law may be raised at any time. But where the decision of a matter involves an investigation of facts the plea cannot be allowed for the first time in second appeal.²

New Point cannot be raised in appeal.

Pure question of law may be raised.

¹ Ram Kinkar *v.* Tufani Ahir, 53 All. 65.

² Matilal *v.* Kamakshya Charan, 59 Cal. 301: 35 C.W.N. 1072: A.I.R. 1932 Cal. 209.

Mixed
question of
law and
fact.

Although a new point involving the determination of a question of fact cannot be allowed in second appeal,³ it may be allowed to be raised by a party for the first time in the first or second appeal, if it is a pure question of law and does not take his opponent by surprise. But the position is very different when the plea raises questions of fact or mixed questions of fact and law.⁴ A plea that the suit was barred by sec. 47 of the Civil Procedure Code, can be raised for the first time in second appeal as it is a pure matter of law affecting the very validity of the suit.⁵ A pure question of law arising out of the findings of the Courts below and patent on the record can be raised for the first time in second appeal.⁶ A ground as to part payments under sec. 20 of the Limitation Act is one which necessarily involves the determination of a question of fact and cannot be allowed for the first time in second appeal.⁷ The question of family settlement is not a pure question of law, but a mixed question of fact and law.⁸ The question of domicile under the Divorce Act is a mixed question of fact and law.⁹ A plaintiff cannot be allowed in second appeal to set up an alternative case when he finds that his main prayer has been refused by the lower Court.¹⁰ A new plea not raised in either of the Courts below if it relates to a point of jurisdiction, can be entertained in second appeal.¹¹ Where there was no express plea in the written statement that a certain compromise had the

³ *Kristopada v. Chaitanya*, 49 Cal. 1048: 28 C.W.N. 92: A.I.R. 1923 Cal. 274.

⁴ *Secy. of State v. Upendra*, 36 C.L.J. 336: A.I.R. 1923 Cal. 247.

⁵ *Lakshmana v. Jujisti Panda*, 1928 M.W.N. 601: 113 I.C. 547.

⁶ *Diwan Chand v. Bishen Das*, 67 I.C. 919.

⁷ *Satappa Jakappa v. Annappa*, 47 Bom. 128: 24 Bom.L.R. 1284: 76 I.C. 115.

⁸ *Shambhu Phasad v. Mahadeo Prasad*, 55 All. 554.

⁹ *Wright v. Wright*, 58 Cal. 259: A.I.R. 1931 Cal. 383 (S.B.).

¹⁰ *Ram Dayal v. Pitam Bowri*, A.I.R. 1933 Pat. 269: 145 I.C. 613.

¹¹ *Ram Rup v. Special Manager, Court of Wards*, 9 Luck. 365: 11 O.W.N. 193: A.I.R. 1934 Oudh 55.

effect of estoppel and accordingly no specific issue was framed on that question by the trial Court, and the point was not expressly taken in the grounds of appeal before the lower appellate Court, and therefore the lower appellate Court did not discuss the question and it does not appear that the point was expressly pressed before it, it would not be proper to allow the point to be raised in second appeal.¹² Where the basis for a plea of *res judicata* had not been laid in the lower Courts it should not be allowed to be raised in second appeal.¹³ Where secondary evidence of the contents of a deed are laid without objection by the other party, the objection cannot be raised in second appeal.¹⁴ Questions as to jurisdiction were allowed to be raised for the first time in Letters Patent appeal.¹⁵

Question as to Jurisdiction.

Questions of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is essentially a question of law, so also is the question of admissibility of evidence and the question of whether any evidence has been offered on one side or the other; but the question whether the fact has been proved, when evidence for and against has been properly admitted, is necessarily a question of fact. In *Ram Narain Singh v. Bhim Ghanjhu*,¹⁶ the case against two of the defendants was sought to be distinguished on the ground that there were special circumstances connected with their holdings. But then it turned out that those circumstances were never relied upon in the pleadings. They formed no part of the plaintiff's case; no issue was directed as to them; there had been no proper examination of the case with respect to them. It was held by their Lord-

Legal effect of proved fact.

¹² *Mahomed Hasan v. Amba Prasad*, A.I.R. 1934 All. 770: 149 I.C. 93.

¹³ *Venkatachalam v. Rajah of Shivaganga*, 67 M.L.J. 268: A.I.R. 1934 Mad. 551.

¹⁴ *Umaruddin v. Ghulam*, 160 I.C. 751: A.I.R. 1935 Lah. 628.

¹⁵ *Nathu Lal v. Kewal Lal*, 57 All. 230.

¹⁶ 3 C.W.N. 249 (P.C.).

ships of the Privy Council that the High Court very justly, when these circumstances were brought before its attention on appeal, said that the plaintiff had no right to raise the point. It would be exceedingly unjust to the respondents if the plaintiffs were allowed to raise the new point. The case must be held to be closed. In the absence of any exceptional conditions, it is not open to a party to raise a fresh point, which though raised in the pleadings and in the reasons attached to the appellant's case lodged in the Council, was not raised at the hearing either in the original Court or in the appeal to the High Court, and which might then have been raised in a convenient form and at an opportune time.¹⁷

New plea
before Privy
Council.

The appellant, the plaintiff in the suit, raised for the first time before the Privy Council the contention that an assessment under the Madras Encroachment Act of 1905 was leviable only on the actual occupant of the land encroached upon, and could not be levied upon a person in the position of the appellant, *viz.*, a lessor who had granted leases of the land under the *bona fide* belief that it formed an accretion to his estate. The contention was not put forward in the Courts below. On the other hand, the whole controversy between the appellant and his predecessor-in-interest on the one hand and the Government on the other which had preceded the actual imposition of the penal assessment, proceeded upon the admission or tacit assertion of the appellant that he was in occupation of the lands, or, at all events that he took upon himself the burden of vindicating the action of his own lessees or sub-lessees in cultivating it. The result of the position so taken up by the appellant was that the Government had no opportunity of considering upon whom the notice of assessment which they ultimately sent to the appellant should have been given, and upon

¹⁷ Maharajah Manindra Chandra v. Rajah Sri Sri Durga Prasad, 21 C.W.N. 707: 25 C.L.J. 567: 38 I.C. 929: 32 M.L.J. 559

whom the penal assessment should have been levied. It was held that it was too late for the Board to entertain the contention put forward.¹⁸ When a question of law is raised for the first time in a Court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent, but expedient, in the interests of justice, to entertain the plea. This is based upon the general principle upon which a tribunal of last resort exercises in the public interest the jurisdiction conferred upon it.¹⁹ Nobody is ever precluded from raising a point of law, except where there are some other considerations which would make it unfair that he should raise it. Where the point is not a pure point of law and depends very largely upon the facts, it cannot be permitted to be raised for the first time in an appeal to the Privy Council.²⁰ It is a safe maxim for a Court of appeal to be governed by that an objection which, if taken, might have been cured and which has not been taken in the Court below, shall not be taken in the Court of appeal.²¹

¹⁸ *Maharajah of Vizianagram v. Secy. of State*, 53 I.A. 64: 49 Mad. 249:50 M.L.J. 391: 43 C.L.J. 378: A.I.R. 1926 P.C. 18.

¹⁹ *Yorkshire Insurance Co. v. Thomas Braine*, 32 M.L.T. 25 (P.C.).

²⁰ *Lingangowda v. Basangowda*, 54 I.A. 122: 51 Bom. 450: 29 Bom.L.R. 848: 31 C.W.N. 570: 45 C.L.J. 504: 8 P.L.T. 462: A.I.R. 1927 P.C. 56.

²¹ *Dhurm Das v. Shama Soondari*, 3 M.I.A. 229: 6 W.R. P.C. 43.

PART X

REVISION.

SYNOPSIS.

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| <ol style="list-style-type: none">1. Grounds of Revision—<ol style="list-style-type: none">(i) Absence of Jurisdiction.(ii) Refusal to exercise Jurisdiction.(iii) Exercise of Jurisdiction illegally or with material irregularity.2. Sec. 115 applies to Jurisdiction alone.3. Omission to exercise Jurisdiction.4. Meaning of “illegally” and “with material irregularity.”5. Facts ousting Jurisdiction must be patent.6. Error of law is no ground.7. Revision of Interlocutory orders. | <ol style="list-style-type: none">8. No Revision where substantial justice done.9. Order of Land Acquisition Collector.10. Bengal Village Self-Government Act.11. Power of Superintendence of High Court.12. Revision and Superintendence not the same thing.13. B. A. D. Act.14. Bengal Local Self-Government Act.15. Burma Rural Self-Government Act.16. Bengal Municipal Act.17. Bengal Tenancy Act.18. Provincial Small Cause Courts Act.19. Orders under a misapprehension of law. |
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Sec. 115, C. P. Code—

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

Where there is no right of appeal the High Court's power of interposition is provided by the creation of

its revisional jurisdiction and that jurisdiction is extremely narrow and limited. It only arises in cases of an error of a Court below when such error affects its jurisdiction. Such revisional jurisdiction can be destroyed only by an express legislative enactment. Sec. 115 of the Civil Procedure Code applies to jurisdiction alone, the irregular exercise or non-exercise of it, or illegal assumption of it. An application under that section may, therefore, fail to be considered on the grounds:—(1) absence of jurisdiction; (2) refusal to exercise jurisdiction vested in him; and (3) where the subordinate Court has not only had jurisdiction but has also exercised it but exercised it illegally or with material irregularity. The third ground would not clearly include erroneous conclusions of fact or law reached in the exercise of jurisdiction but it would certainly include such rules of procedure as lay down certain preliminary conditions on the fulfilment of which the exercise of jurisdiction one way or the other will depend.² Where a Court has jurisdiction to decide a question before it and in fact decides the question, it cannot be regarded as acting in the exercise of its jurisdiction illegally or with material irregularity merely because its decision is erroneous. Courts have jurisdiction to decide questions rightly as well as wrongly, and where a Court below has applied its mind to the case before it and duly considered the facts and the law applicable, then, although its decision may be erroneous, that error cannot be corrected on revision. In the leading case of *Amir Hassan Khan v. Sheo Baksh Singh*,³ their Lordships of the Privy Council observed: "The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity? It appears that they had perfect jurisdiction to decide the question which was before them

Grounds of
revision.

² *Gaya Prasad v. Kalap Nath*, 4 Luck. 539: 119 I.C. 357 (F.B.).

³ *Ejaz Rasul Khan v. Mubarak Husain*, 79 I.C. 1033.

⁴ 11 I.A. 237: 11 Cal. 6.

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v.
Vasudeva
(P.C.)

namely, whether the suit was barred as *res judicata*, and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity." In *Balkrishna v. Vasudeva*⁴ their Lordships of the Privy Council observed with reference to sec. 115 of the Civil Procedure Code: "It will be observed that the section applies to jurisdiction alone, the irregular exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. Section 115 of the Civil Procedure Code would apply to cases where there is a wilful disregard or conscious violation by a judge of a rule of law or procedure. The High Court can interfere under sec. 115 if the erroneous decision is the result of conscious violation by the lower Court of a rule of law or procedure."

It is necessary at least to show that some jurisdiction has been irregularly exercised. Where a Court refuses to exercise a jurisdiction vested in it by law upon a misapprehension of the law or an erroneous construction of a statute, the High Court can interfere in revision.⁵

High Court
—when will
interfere.

It is well settled that where a Court has jurisdiction to determine a question and it has determined that it cannot be said to have acted illegally or with material irregularity simply because it has come to an erroneous decision. The High Court will not interfere under sec. 115 of the Civil Procedure Code, merely because the lower Court had wrongly decided that a suit was barred by limitation or that it was barred by *res judicata* or because the lower Court had proceeded upon an erroneous construction of the section of an Act, or had misunderstood the effect of a document in evidence

⁴ 44 I.A. 261: 40 Mad. 793: 33 M.L.J. 69: 22 C.W.N. 60: 26 C.L.J. 143: 1917 M.W.N. 628: 19 Bom.L.R. 715.

⁵ *Kanai Lal v. Purna Chandra*, 34 C.W.N. 733.

or had excluded evidence which it ought to have admitted. Sec. 115 applies to jurisdiction only, the irregular exercise of it or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. Jurisdiction according to the exact conception of it formed by the Roman lawyers consist in taking cognizance of a case involving the determination of some jural relations, in ascertaining the essential points of it and in pronouncing upon them. An enquiry into whether the jurisdiction exists is not an exercise of jurisdiction over the case itself, but an investigation of another question altogether, that of whether the considerations of cognizance are satisfied.⁶ The revisional jurisdiction of a High Court should be confined and strictly confined to cases in which there has been material irregularity so far as jurisdiction is concerned and either a failure to exercise a jurisdiction vested in the Court or a wrong exercise of such jurisdiction. It is wrong to utilize the revisional power to correct errors of law and not merely errors of procedure.⁷ An erroneous decision, whether on a point of fact or on a point of law, is not sufficient reason for revision.⁸ To assume jurisdiction to do an act by taking an erroneous view of the law, when there is really no jurisdiction raises a case for interference under sec. 115, C. P. C.⁹

In the case of *Indubala Dassi v. Lakshmi Narayan Ganguly*,¹⁰ the learned Judges observed: "There has been a good deal of controversy as to the exact meaning of the words "acted in the exercise of its jurisdic-

⁶ E.I.Ry. v. Kanai Lal, 28 C.W.N. 292: A.I.R. 1924 Cal. 493: 80 I.C. 205.

⁷ Lloyds Bank v. Surojimull, 30 C.W.N. 928: A.I.R. 1926 Cal. 1112: 98 I.C. 751.

⁸ Bankey Lal v. Ram Lal, 12 O.L.J. 112: 86 I.C. 918; Abbasali v. Badri Prasad, 116 I.C. 660; Rajendra v. Sheik Abdul, A.I.R. 1923 Cal. 280.

⁹ Ramaswami v. Velappa Goundan, 44 M.L.J. 1: A.I.R. 1923 Mad. 192.

¹⁰ 38 C.W.N. 1146.

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Khan
v.
Sheo Baksh
Singh
(P.C.)

tion illegally or with material irregularity" as used in sec. 115, cl. (c) of the Code. In the case of *Rajah Amir Hassan Khan v. Sheo Baksh Singh*,¹¹ their Lordships of the Judicial Committee have observed as follows:—

"It appears that they (*i.e.*, the Judges of the lower Courts) had perfect jurisdiction to decide the question which was before them and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

Again in the case of *Bal Krishna Udayar v. Vasudeva Aiyar*,¹² their Lordships of the Judicial Committee have observed that "sec. 115 applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved." In the case of *Umed Mal v. Chand Mal*,¹³ the Judicial Committee has, however, held that if a Court decides a case in the absence of a necessary party, that is material irregularity within the meaning of sec. 115, C. P. Code.

Now if the third clause of sec. 115 of the Code is not intended to have a meaning distinct from that of the other two clauses, it would not have been added to sec. 622 of the Code of 1877 by the Amending Act of 1879. *Amir Hassan's case*,¹¹ simply decided what "illegality" or "material irregularity" is not. From *Balkrishna's case*¹² it is not also easy to deduce any clear rule of construction of the third clause of sec. 115 except the negative one that wrong conclusions of law or fact in which the question of jurisdiction is not involved are not included in it. "All cases of 'acting illegally' are cases of error of law, though the con-

¹¹ 11 I.A. 237: 11 Cal. 6.

¹² 44 I.A. 261: 22 C.W.N. 56.

¹³ 53 I.A. 271: 31 C.W.N. 413.

verse is far from true. Any error in law which amounts to a usurpation of authority in the act done by the Court comes within cl. (c) if it is not already within cl. (a).” “In the broad sense of the word, no Court has ever jurisdiction to make an order what in fact is in law is wrong.” [See *C. D. M. Hindley v. Joynarain Marwari*].¹⁴ *Umed Mal's case*¹⁵ seems to imply that cl. (c) may be applied when failure of justice is due to one or other defects of procedure. But does the said clause refer only to defects of procedure? Is it confined to errors in the method or manner of trial only? “Jurisdiction to try a suit does not mean jurisdiction to anything whatever by order made in that suit; if it did an exception for material error in procedure, strictly so-called, would be almost ludicrous” [*C. D. M. Hindley v. Joynarain Marwari*].¹⁴ Again the words “illegally” and “material irregularity” cannot have the same meaning. If the words acted with “material irregularity” refer to irregularity in procedure, what meaning is to be attached to the words “acted illegally?” In view of these difficulties it has been laid down in some cases by this Court that cl. (c) has been advisedly left in indefinite language in order to empower this Court to interfere and correct gross and palpable errors of subordinate Courts for the ends of justice. [See *Mathura Nath Sarkar v. Umes Chandra Sarkar*,¹⁶ *Raghu Nath Gujrati v. Rai Chatraput Singh*¹⁷ and *Jogunnessa Bibi v. Satish Chandra Bhattacharji*.]¹⁸

Meaning of
'Jurisdiction'.

Where upon an erroneous construction of a statute, a Subordinate Judge assumed a jurisdiction which did not belong to him, the High Court had the power to revise his decision.¹⁹ Where the Subordinate Judge assumed jurisdiction to enquire into a petition on a

¹⁴ 46 Cal. 962.

¹⁵ 53 I.A. 271: 31 C.W.N. 413.

¹⁶ 1 C.W.N. 626.

¹⁷ 1 C.W.N. 633.

¹⁸ 51 Cal. 690: 28 C.W.N. 659.

¹⁹ *Bheemji v. B. B. & C. I. Ry.*, 50 Bom. 215.

wrong view of the law that a certain maxim *Actus curii aceminem gravabit* applied, where in fact it did not, an application in revision was held to be maintainable.²⁰ Where it was open to the Judge to decide the question of title incidentally in so far as it was necessary for the purposes of giving relief to the plaintiffs, namely, their prayer for declaration of right to, and recovery of the price of fish, but it was not within his jurisdiction at all to declare the plaintiff's title to the tank in dispute. It was held that the High Court should in revision expunge so much of the decree of the lower appellate Court as declared the plaintiff's title to the tank in suit which was not within the Judge's jurisdiction to declare.²¹ Where a suit was dismissed by a Subordinate Judge and on appeal to the District Judge he differed from the Subordinate Judge as to the value of the properties and returned the appeal to be presented to the proper Court, it was held that the District Judge had jurisdiction to pass the order that he passed and that no revision lay.²² The fact that the Court below acts wrongly would not invoke the revisional powers of the High Court when the Court below acts within jurisdiction and there is no question of law to be considered.²³ A Court has jurisdiction to construe its own order and the High Court would not interfere if there is no irregularity in the exercise of that jurisdiction.²⁴ Where there is a refusal to exercise a jurisdiction which undoubtedly the Court possessed and there is an appeal to the District Judge who comes to the same conclusion as the Court below an application in revision would lie against the orders of both the Courts. It would be

²⁰ *Krishnaji v. Muthuveera*, 44 M.L.J. 344: A.I.R. 1923 Mad. 490.

²¹ *Aradhan v. Abhoya Charan*, A.I.R. 1923 Cal. 321: 68 I.C. 626.

²² *Mt. Ladli Begum v. Ram Das*, 6 P.L.T. 448: A.I.R. 1925 Pat. 488.

²³ *Moti Lal v. Nandan*, 121 I.C. 545: A.I.R. 1930 All. 122.

²⁴ *Tulaman v. Prayag*, 6 P.L.T. 481: A.I.R. 1925 Pat. 318: 86 I.C. 107.

different if the District Judge came to a different conclusion from that of the first Court.²⁵ Ordinarily the High Court in revision does not interfere with interlocutory orders in a suit but would interfere in a fit case. Where the order of the Subordinate Judge resulted in his refusal to entertain and try a suit and although a preliminary question as to whether the Court had jurisdiction or not was a question which had to be determined by interpreting certain sections of the Court Fees Act and the Civil Courts Jurisdiction Act, still the result of the decision made upon a misapprehension of the true effect of the statutory provisions being either exercise or refusal of jurisdiction, the High Court was entitled to interfere in revision.²⁶

If a Judge, having jurisdiction to decide an election petition under the Bengal Municipal Act, misconstrues a section of the Act in deciding it, he does not exercise his jurisdiction illegally or with material irregularity so as to justify revision under sec. 115 of the Civil Procedure Code.²⁷ In the case of *Lala Atma Ram v. Lala Beni Prasad*,²⁸ both the next reversioners of a property which was for the time being in the hands of an intervening widow, died and the widows of the first became wards of the United Provinces Court of Wards. The properties being put in possession of a relative of the intervening widow, a suit was brought by the Collector on behalf of the widows of the first reversioner and in that suit the widow of the second reversioner was made a party as a defendant. Subsequently, the Collector withdrew the suit and thereupon two applications were made, one by the first reversioner's widows to be substituted as plaintiffs and another by the said widows and the next nearest

Lala Atma
Ram
v.
Lala Beni
Prasad.

²⁵ *Firm Ganeshi Lal v. Debi Das*, 47 All. 140.

²⁶ *Rajani Kanta v. Rajabala*, 52 Cal. 128; 29 C.W.N. 76; A.I.R. 1925 Cal. 320; 85 I.C. 870; *Yatindra Nath v. Hari Charan*, 20 C.L.J. 426.

²⁷ *Birendra Lal v. Nagendra Nath*, 39 C.W.N. 910.

²⁸ 39 C.W.N. 1249 (P.C.).

reversioner to both the deceased reversioners to be joined as plaintiffs. The Subordinate Judge who dealt with all the applications summarily dismissed the application of the widows on the ground that by reason of the bar of sec. 55 of the Court of Wards Act, they could not be substituted in their own names and he also dismissed the application of the reversioner on the ground that not being a party to the suit and no interest having devolved upon him during the pendency of the suit, he could not come in. In the result the suit was dismissed and no leave to file a fresh suit was applied for or given. On an application under sec. 115 of the Civil Procedure Code against the judgment of the Subordinate Judge, the High Court refused to interfere in favour of the widows but interfered on behalf of the reversioner. It was held by their Lordships of the Privy Council that the High Court had jurisdiction to interfere under sec. 115 as the Subordinate Judge had acted with material irregularity in dealing with the reversioner's application summarily under a total misapprehension of its nature.

Chandulal
v.
Purna
Chandra.

In the case of *Chandulal Siraogi v. Purna Chandra Paul*,²⁹ it has been held that damage to prestige or a feeling of humiliation is not an injury within the meaning of sec. 95 of the Code of Civil Procedure for which compensation may be awarded under that section for attachment before judgment of the property on insufficient grounds. When compensation has been awarded on such grounds, the High Court can interfere in revision under sec. 115 of the Civil Procedure Code, it being a case where the Court by a misrepresentation of a statute, assumed jurisdiction in respect of a matter over which it would not have had jurisdiction if the statute had been rightly interpreted. Mitter, J., observed in the judgment of the case: "It has been held in this Court that if a Court by mis-interpretation

²⁹ 39 C.W.N. 915.

of the provisions of a statute assumes a jurisdiction in respect of a matter over which it would not have had jurisdiction if the statute had been rightly interpreted, the order made is one which is liable to be revised, if not under cl. (a) to sec. 115, at least under cl. (c) of the said section. The case of *Hindley v. Joynarain Marwari*,³⁰ is an illustration of the proposition I am stating." Hindley
v.
Joynarain.

Where the Court passed a decree on the basis of an award as an adjustment and the lower appellate Court had affirmed the same, it was held by the High Court that a second appeal in such a case was barred, because the appeal being in effect an appeal from the order recording the compromise or adjustment, would offend against the Code which provides only one appeal and consent having been found by the final Court of fact, the decree must be taken to be a consent decree from which an appeal is barred by sec. 96 (3) and also by the principle of equitable estoppel, but the High Court would interfere in revision with the decree as one passed without jurisdiction.

The ordinary rule is that the High Court will not interfere in revision in any case in which the petitioner has another remedy except in very exceptional circumstances.³² The High Court will be slow to exercise its powers of revision unless the party applying to the Court has no other remedy. Facts ousting jurisdiction must be patent on the face of the record before it can be predicated of a Court that it has exercised a jurisdiction not vested in it by law in terms

³⁰ 46 Cal. 962: 24 C.W.N. 288.

³¹ *Mia Pandit v. Osman Ali*, 39 C.W.N. 480.

³² *Administrator-General, Burma v. C.R.V.V.S. Chettiar Firm*, 5**Rang.* 742: A.I.R. 1928 *Rang.* 83: 109 I.C. 444; *Syed Baker Hussain v. Mirza Hussain*, 4 P.L.T. 46: A.I.R. 1923 *Pat.* 223; *Ram Kishen v. Sukhu Ram*, 28 P.L.R. 136: 100 I.C. 595; *Salam Chand v. Bhagwan Dan*, 53 Cal. 767: 30 C.W.N. 907: A.I.R. 1926 Cal. 1149; *Baldar v. Imam*, 76 I.C. 46; *S. A. Zamin v. S. M. A. Ali*, 1 *Pat.* 68: 3 P.L.T. 406: A.I.R. 1922 *Pat.* 315.

of cl. (a) to sec. 115 of the Civil Procedure Code.³⁵ But the existence of another remedy cannot be an insuperable obstacle in the way of interference by the High Court in revision.³⁴ The exercise of revisional powers is always discretionary, and where an aggrieved party has other remedy available the High Court will be unwilling to interfere.³⁵ It is wrong in principle that a petitioner should invoke the extraordinary powers of the High Court without exhausting the ordinary powers of the Court below which may give him all he wants.³⁶ It would require very strong grounds to induce the Court to interfere in revision in a case where a party has another remedy open to him.³⁷ If the case comes within the scope of sec. 115, C. P. Code, and if there are sufficiently strong reasons for interference, then, notwithstanding that fact that the petitioner has another remedy open to him, the High Court may and does interfere.³⁸ Where the lower Court had failed to exercise a jurisdiction vested in him by law by refusing to entertain an application for review based on the ground of fraud, the High Court interfered in revision notwithstanding the existence of another remedy to the petitioner.³⁹ There are cases in which justice requires interference in revision even where another remedy is open to the aggrieved party.⁴⁰

Error of
law is no
ground.

A mere error of law is no ground for exercising the powers of revision.⁴¹ Even if the lower Court had committed an error of judgment or of law the High

³⁵ *Emnobai v. Fakir*, 65 I.C. 50.

³⁴ *Ram Sarup v. Gaya Prasad*, 48 All. 175.

³⁵ *S. A. Zamin v. S. M. A. Ali*, 1 Pat. 68: 3 P.L.T. 406: A.I.R. 1922 Pat. 315.

³⁶ *Ganda Singh v. Emperor*, 30 Cr.L.J. 862: 117 I.C. 906.

³⁷ *Arunachallam v. Sivalingam*, 104 I.C. 371: A.I.R. 1927 Mad. 799.

³⁸ *Hira Lal v. Ramchandra*, 32 Bom.L.R. 619: A.I.R. 1930 Bom. 375.

³⁹ *Khitish Chandra v. Nagendra Nath*, 33 C.W.N. 572: 49 C.L.J. 425: A.I.R. 1929 Cal. 513: 119 I.C. 371.

⁴⁰ *Ajodhya Prosad v. Secretary of State*, 79 I.C. 123.

⁴¹ *Hari Charan v. Birendra Nath*, 35 C.L.J. 327: A.I.R. 1921 Cal. 749.

Court cannot and should not in ordinary cases interfere under sec. 115 of the Civil Procedure Code.⁴² A mere error of law, however gross, would not in itself be sufficient for interference in revision. That error of law must result either in failure to exercise jurisdiction or in wrong exercise of jurisdiction or an irregularity in the exercise of jurisdiction before the High Court can interfere under sec. 115, C. P. Code.⁴³ A Judge has jurisdiction to come to a wrong decision as well as to a right one. But there must be some limit to the principle that the Court has jurisdiction to decide wrongly as well as rightly. In the case of *Jogendranath Das v. Purshottam Shah*,⁴⁴ Mr. Justice Panckridge observed: "I therefore have to consider whether the Chief Judge of the Small Causes Court being clearly in error, the case is one in which I ought to take action under sec. 115 of the Civil Procedure Code. I should have been in considerable difficulty if the learned Chief Judge had adopted the findings of the learned trial Judge, because although in my opinion the learned trial Judge should not have allowed the plaintiffs to have proved an agreement which was at variance with their pleadings, it is not the practice with this Court in dealing with Small Causes Court proceedings to be over-particular in technical matters, but the fact that the learned trial Judge's judgment is not beyond criticism, it appears to me to be a material matter. Though it has been laid down more than once that a Judge has jurisdiction to come to a wrong decision as well as to a right one, there must be some limit to the latitude to be given to this principle. I do not find it possible to stretch the principle to the extent of holding that it precludes the Court from interfering in a case where a Judge has given a litigant the benefit of a contract to which he has found that litigant was not a party. That seems

Error of law is no ground for revision.

⁴² *Surudas v. Dasarathi*, 65 I.C. 512.

⁴³ *Murlidhar v. Ram Gopal*, 1931 A.L.J. 995: A.I.R. 1931 All. 667.

⁴⁴ 41 C.W.N. 601.

to me to be an illegal exercise of jurisdiction or at any rate a material irregularity."

High
Court's
Revisional
jurisdiction.

The High Court has no jurisdiction to interfere in revision with an erroneous order on a question of fact or a mixed question of fact and law.⁴⁵ The question of whether there is sufficient cause for an adjournment under Or. 17, r. 1 of the Civil Procedure Code is a question of fact, and the lower appellate Court has undoubtedly jurisdiction to decide the matter. Whether its decision is right or on the merits wrong, it must be held to be final on the point.⁴⁶ Where the High Court, in its appellate jurisdiction, has directed security to be furnished by a party to the satisfaction of a lower Court or of the Registrar, the decision of such authority on the sufficiency of the security cannot be questioned by means of an appeal or an application and the High Court cannot go behind his finding. The High Court, however, can review its order on proper grounds, such as that the authority designated has not acted in accordance with the order or acted improperly or has not come to any finding on the sufficiency or otherwise of the security.⁴⁷ An order by a Judge setting aside an election on an election petition on the ground that the nomination paper of a rival candidate was improperly rejected under sec. 38 (d) of the Bengal Municipal Act is final and cannot be revised by the High Court.⁴⁸ A Court, setting aside a sale under sec. 174 (3) of the Bengal Tenancy Act in the absence of a deposit as contemplated by that provision, without being satisfied that such deposit is unnecessary and without recording the reasons therefor, exercises its jurisdiction with material irregularity such as attracts sec. 115 of the Code of Civil Procedure. When a sale has been so set aside, the High Court's power to revise that order is

⁴⁵ *Hajra v. Hameeda*, A.I.R. 1935 Pat. 448: 157 I.C. 474.

⁴⁶ *Sri Nath v. Mata Prasad*, 1935 A.L.J. 372: A.I.R. 1935 All. 476.

⁴⁷ *Bibhabati v. Ramendra*, 42 C.W.N. 188.

⁴⁸ *Bon Behari v. Makhan Lal*, 42 C.W.N. 282.

not affected by the fact that the execution case itself has since been dismissed.⁴⁹ If a Court permitted a decree-holder to bid at the sale and allowed him to set off the purchase money towards his decree, it is open to the Court on a good case being made out to withdraw that order and order him to deposit the purchase money in cash for rateable distribution. If the lower Court did not do so, the High Court can pass such an order in revision.⁵⁰ Where the lower Court had decided the case on a totally incorrect and inequitable view and injustice had resulted and a further remand appeared to be undesirable, it was held that the High Court was competent in revision to go through the record and decide the case on the merits.⁵¹ The exercise of the revisional powers of the High Court is entirely discretionary. In a revisional matter the High Court does not take a technical view and interferes in every case, where an order has been made irregularly or even improperly.⁵²

The provisions of sec. 115 of the Civil Procedure Code do not contemplate the invoking of the revisional jurisdiction of the High Court in the case of interlocutory orders passed during the trial of a pending suit. In the case of a suit, it is the suit itself and not any branch of it which can be regarded as a "case" within the meaning of sec. 115. But proceedings before the commencement of a suit as well as proceedings after a suit has come to an end, being proceedings independent of the suit, must stand on a different footing.⁵³ The High Court does not generally interfere with interlocutory orders, especially when the

Revision of
interlocutory
orders.

⁴⁹ *Probodh Chandra v. Kunja Lal*, 39 C.W.N. 913: 62 C.L.J. 308.

⁵⁰ *Gangai Ram v. Muktiram*, 11 Pat. 250: 12 P.L.T. 639: A.I.R. 1931 Pat. 405: 134 I.C. 616.

⁵¹ *Labh Singh v. Qaim Din*, 32 P.L.R. 710: A.I.R. 1931 Lah. 748.

⁵² *Sher Singh v. Jitendranath*, 59 Cal. 275: 36 C.W.N. 16: 54 C.L.J. 253: A.I.R. 1931 Cal 607: 134 I.C. 1045.

⁵³ *Paras Nath v. Ran Bahadur*, 1935 O.W.N. 1158: 158 I.C. 949: A.I.R. 1936 Oudh 22 (F.B.).

party who alleges to have been aggrieved has an alternative remedy open to him. But it will not hesitate to interfere with an interlocutory order in a proper case, where it is manifest that if the order is not promptly interfered with, the party affected by the order may suffer an irremediable harm.⁵⁴ Where a question of *res judicata* has been decided by an interlocutory order, it is not a question which can be raised in revision against the interlocutory judgment.⁵⁵ Where the executing Court refused to decide the value of the properties sought to be sold directed that the house property should be sold before *zamindari* property, it was held that the interlocutory order in question would not be revised by the High Court.⁵⁶ If an interlocutory order is such as raises the question of jurisdiction and works irreparable damage to the complaining party, then an application in revision will lie. But where there is another course open to the applicant and no irremediable harm can be suffered by the interlocutory order, the High Court will not interfere in revision.⁵⁷

Although the High Court will not interfere in revision with interlocutory orders unless an irreparable injury or miscarriage of justice will ensue in the event of the Court holding its hands, where such injury would be caused to one of the parties, the High Court ought to and will intervene. And, although an interlocutory order may be a discretionary order and it may be one that can be challenged in an appeal from the decree that may be passed, still the High Court can and will interfere in a fit case under sec. 115 of the Civil Pro-

⁵⁴ *Ram Lal v. Bibi Sahra*, 1935 Pat. 90; *Mahomed Chootoo v. Abdul Hamid*, 11 Rang. 36; A.I.R. 1933 Rang. 49: 143 I.C. 525; *Senaji Kapurchand v. Pannaji*, 33 Bom.L.R. 1596: A.I.R. 1932 Bom. 81.

⁵⁵ *K. N. S. P. K. N. K. Firm v. U Ba Chit*, A.I.R. 1935 Rang. 158; *Maung Pyu v. Ma Mi Gyi*, A.I.R. 1933 Rang. 263: 146 I.C. 615.

⁵⁶ *Ram Kumar v. Ram Chandra*, 147 I.C. 997: A.I.R. 1933 All. 959.

⁵⁷ *Ramkinkar v. Jogendra Nath*, 16 P.L.T. 158: A.I.R. 1935 Pat. 186: 155 I.C. 617.

cedure Code or sec. 107 of the Government of India Act or under both, in order to prevent irreparable injury or failure of justice. Where the effect of an interlocutory order is to exclude the evidence of a witness who, because of his great age and precarious health, may not be available to the plaintiff if on appeal a certain view is taken of the case which makes his evidence essential and where a further effect is that on that view being taken by the appellate Court, a remand would be necessary to the trial Court for evidence, thus protracting the litigation, there is a fit case for interference with the interlocutory order. This was the view taken in the case of *Indubala Dassi v. Lakshmi Narayan Ganguly*⁵⁸ by Mr. Justice Nasim Ali and Mr. Justice Khundakar, who observed in the judgment as follows:—

“Another branch of the argument of the learned Counsel for the opposite party in this connection is that even if this Court has power under sec. 115 to revise the orders of the Subordinate Judge, the orders under discussion in these Rules are merely interlocutory orders and consequently they cannot be revised by this Court at this stage. It is argued that sec. 115 of the Code is confined to a case which has been decided, in other words, to a case where the rights of the parties have been determined. It is contended by the learned Counsel that as the rights of the parties have not yet been determined, this Court cannot interfere at this stage. Reliance was placed in support of this contention on the observations of Woodroffe, J., in the case of *Chandi v. Kripal*.⁵⁹ So far as this Court is concerned, it can be said to be now fairly established that this Court will not interfere with interlocutory orders unless an irreparable injury will be done and miscarriage will inevitably issue if this Court holds its hand. If however irreparable injury would be caused to one of the litigants if the matter

⁵⁸ 38 C.W.N. 1146.

⁵⁹ 15 C.W.N. 682.

Salam
Chand
v.
Bhagwan
Das.

was not set right, "this Court ought to interfere in the current litigation and disturb the normal progress of a case by revising an interlocutory order that has been passed by a subordinate Court." See *Salam Chand Kannayram v. Bhagwan Das Chilhama*.⁶⁰

It was, however, contended on behalf of the opposite parties that as these orders can be challenged in the appeal from the decree which may be passed in that suit, this Court should not interfere at this stage. Reliance was placed for this contention also on the decision of this Court in the case of *Chandi v. Kripal*⁶¹ cited above. It is true that in that case Woodroffe, J., observed that interlocutory orders did not come within the scope of sec. 115 but the learned Judges who decided that case were of opinion that this Court would have power under sec. 15 of the Charter Act to interfere and to set aside the order of the subordinate Courts. It is, however, argued that Or. 6, r. 17 of the Code gives a discretion to the Court either to allow or reject the prayer for amendment and that the Court is not bound to allow the amendment. But it has been pointed out by this Court in the case of *Loke Nath Mukherjee v. Abani Nath Mukherjee*⁶² that "ordinarily the discretion of a judicial officer will not be reviewed by this Court in revision. But it is impossible to lay down a hard and fast rule that in no instances will the discretion exercised by the judicial officer be reviewed either under sec. 115 of the Code or sec. 107 of the Government of India Act or under the combined operation of the two sections." Again there is a respectable body of authority, at any rate in this Court, in support of the view that under sec. 107 of the Government of India Act (sec. 15 of the Chapter) this Court can interfere where irreparable injury will be done to one of the litigants or where there will be a failure of justice if the matter is not

Loke Nath
v.
Abani Nath.

⁶⁰ 53 Cal. 767.

⁶¹ 15 C.W.N. 682.

⁶² 37 C.W.N. 1093.

set right. *Gobind Mohun Doss v. Kunja Behary Doss*,⁶³ *Amjad Ali v. Ali Hossain Johar*,⁶⁴ *Charu Chunder Dutt v. Sarat Chunder Singh*,⁶⁵ and *Loke Nath Mukherjee v. Abani Nath Mukherjee*.⁶²

Irreparable
loss or
failure of
justice.

The High Court cannot exercise revisional jurisdiction in any case in which an appeal lies to that Court. It is not open to the High Court in revision to question the discretion exercised by the lower Court, unless it is apparent on the face of the record that the discretion has been arbitrarily and erroneously exercised.⁶⁶ A mere error of law is not an illegality within the meaning of sec. 115 of the Civil Procedure Code. Where the lower Court exercises its discretion in the matter of appointing a *mutwalli* and there is nothing to show that the discretion was not exercised properly, the High Court will not interfere especially when the aggrieved party has other remedy available.⁶⁷ Where the lower Court has passed an order upon a careful consideration by exercising discretion vested in it and upon judicial principles, the order cannot be interfered with in revision.⁶⁸ In a suit for declaration that the defendants Nos. 2 to 9 had title in the disputed property which was liable to attachment and sale for rent due from the defendants Nos. 2 to 9, the defendant No. 1 applied for striking off the plaint on the ground that no cause of action existed as the defendant No. 9 had paid to the plaintiff a sum which satisfied his claim. The plaintiff averred that the payment was not sufficient. In the suit also a declaration was asked to the effect that the petitioner had no interest in the property in question. The Munsif rejected the application of defendant No. 1 for striking

⁶² 1 C.W.N. 147; 10 C.L.J. 407.

⁶³ 1 C.W.N. 353; 12 C.L.J. 519.

⁶⁴ 12 C.L.J. 537.

⁶⁵ *Ghulam Rasul v. Kidar Nath*, 36 P.L.R. 5: A.I.R. 1934 Lah. 807; 150 I.C. 305.

⁶⁶ *Mahomed Taqi v. Murtaza Husain*, 8 O.W.N. 999: 134 I.C. 1090: A.I.R. 1931 Oudh 408.

⁶⁷ *Devji Goa v. Tricumji Jivandas*, 14 P.L.T. 252: A.I.R. 1933 Pat. 239: 149 I.C. 760.

off the plaint. It was held that the High Court could not interfere under sec. 115 of the Civil Procedure Code, whether the application be regarded as one in the nature of an interlocutory proceeding in the suit or the matter be considered from the point of view of what the plaintiff was in fact claiming.⁶⁹ It is for the trial Court to decide in what order it will decide the issues and the High Court will not interfere in revision in order to make a direction on this point.⁷⁰

It is not unoften that the High Court has for the ends of justice exercised its revisional jurisdiction even in cases where it doubted whether such interference with an interlocutory order came within the purview of sec. 115 of the Civil Procedure Code. In the cause of *Rai Kiran Chandra Rai Bahadur v. Erfan Karikar*,⁷¹ where after a preliminary decree for mesne profits had been passed, the Court decided the basis upon which mesne profits were to be assessed at the time of appointing a commissioner for ascertainment of mesne profits, and the High Court came to the conclusion that the basis was wrong, the High Court interfered under sec. 115 of the Civil Procedure Code, although it doubted whether such interlocutory order came within the purview of that section. In that case Lort-Williams, J., observed: "The question then arises whether we ought to interfere with this order. It is doubtful whether such an order comes within the provisions of sec. 115 of the Code of Civil Procedure, which provides that the High Court may call for the record of any case which has been decided by any subordinate Court and in which no appeal lies to the High Court. On the question whether such an order as this, and similar interlocutory orders, are cases within the meaning of that section, there has been a

* *Pramatha Nath v. Sree Sree Iswar Gopal Jiu*, 56 C.L.J. 1: A.I.R. 1932 Cal. 831.

⁷⁰ *Sheo Baran v. Lachmi Narain*, 147 I.C. 830: A.I.R. 1933 All. 749.

⁷¹ 38 C.W.N. 384.

good deal of judicial disagreement. I should be inclined to think that the section is not intended to apply to orders of this kind. But if the learned Judge had acted as, in my opinion, he ought to have done in the first place, and had included this decision in his preliminary decree, other consideration might have arisen, as it may be that a preliminary decree under Or. 20, r. 12 is a case within the provisions of sec. 115 of the Code of Civil Procedure. That being so, and bearing in mind that a great deal of money, time and labour will be wasted, if this enquiry be held upon the basis laid down by the Judge, assuming that this basis is a wrong one, which I believe it to be, I think that the circumstances ought to be considered sufficient to induce us to interfere with the order which the Judge has made. I am led to this conclusion because I feel that a great deal of money may be saved to both parties if a decision on the point be given now."

The powers under sec. 115 of the Civil Procedure Code are intended to be exercised with a view to subserve and not to defeat the ends of justice.⁷² Where it is clearly proved that the defendant owes money to the plaintiff and a decree is passed against him, the High Court will not exercise revisional powers on a point of jurisdiction whether the suit lies in the Small Causes Court or the original side of the Court as such interference will bring about an injustice.⁷³ In the case of *Ghisulal Agarwalla v. Todarmull Agarwalla*,⁷⁴ certain belonging to the defendant was attached before judgment in a money-suit and then released on two persons standing sureties for the amount of the claim. The suit was ultimately decreed and the decree-holder applied for execution, whereupon the sureties deposited the

⁷² Kapoor Chand v. Jawahar Lal, 144 I.C. 904: A.I.R. 1933 All. 154.

⁷³ Kuppuswami v. Alwar Chettyar, 1935 M.W.N., 106: 41 L.W. 20: A.I.R. 1935 Mad. 89.

⁷⁴ 26 C.W.N. 169.

decretal amount in Court. On that very day just before the deposit was made, the petitioner who also held a money decree against the same judgment-debtor, applied for execution of his decree and prayed for rateable distribution of the amount deposited. The application was refused by the trial Court and the money paid out to the attaching creditor on the latter giving an understanding to refund the amount in case the High Court reversed the order rejecting the petitioner's application for rateable distribution. It was held that in cases like these where no appeal is allowed, it has been the practice of the High Court to interfere under the powers conferred by sec. 115 of the Civil Procedure Code. In the judgment of the above case Richardson, J., observed: "I have considered whether this is a case in which I ought to interfere under sec. 115 of the Code. The rule was obtained on the footing that the learned Munsif declined to exercise a jurisdiction vested in him. The Code confers no right of appeal from the Munsif's order and it has been pointed out at the bar that the practice of this Court has been to deal with cases such as the present under the powers conferred by sec. 115. I am not therefore, in any way initiating a new practice when I reverse the order of the learned Munsif and substitute therefor an order that the application for rateable distribution should be allowed and the case sent back to the Munsif for the purpose of doing what further may be necessary."

In the case of *Muthia Chettiar v. Ramanathan Chettiar*,¹⁵ it was held by the Madras High Court that the Court is not competent to refuse the issue of a commission for examination of a witness on the ground that the application is a belated one and likely to entail an adjournment of the trial. Such refusal amounts to a misdirection and justifies the High Court in interfering with the order in revision. But the same High

¹⁵ 58 Mad. 400: 67 M.L.J. 878: 40 L.W. 839: A.I.R. 1935 Mad. 21.

Court took a different view in the case of *Kasi Chettiar v. Venkatachalam Chettiar*.⁷⁶ The correct view, it is submitted, seems to be that, the issue of commission is a discretionary matter of the Court when the prayer for the same is made at a late stage of the case; but where that discretion has been arbitrarily exercised and the refusal of the Court to issue the commission may result in failure of justice, the High Court has ample power in its revisional jurisdiction to interfere in the matter.

An order of the lower Court deciding the amount of court-fees payable by the plaintiff is not open to revision by the High Court where the aggrieved party has another remedy open to him. Where he has such a remedy by way of appeal and he merely declines to pay the court-fees demanded, the High Court will not interfere with the order in revision.⁷⁷ Where in determining the market value of land the lower Court proceeded on a principle at variance with the provisions of the Madras Estates Land Act, it was held that the High Court could interfere with the order in revision.⁷⁸ In the case of *Sailendra Nath Kundu v. Surendra Nath Sarkar*,⁷⁹ Guha and Bartley, JJ., observed: "We were not at all impressed with the view presented before us on behalf of the opposite party, that because there was the right of appeal by the plaintiff in the suit after his plaint has been rejected, on the plaintiff's not complying with the Court's order in the matter of payment of deficit court-fees, this Court should not interfere in revision, if we were convinced that the order directing the payment of additional court-fees was not supportable under the law, and was passed in the illegal exercise of jurisdiction by the Court below."

Sailendra
Nath
v.
Surendra
Nath.

⁷⁶ 1933 M.W.N. 648.

⁷⁷ *Ramkinkar v. Jogendra Nath*, 16 P.L.T. 158: A.I.R. 1935 Pat. 186; *Jogendra v. Radha Prosad*, 13 P.L.T. 590: A.I.R. 1932 Pat. 319; *Mahabir v. Jaidavi*, 16 P.L.T. 889: A.I.R. 1936 Pat. 190.

⁷⁸ *Alagappa v. Swaminathan*, 1933 M.W.N. 1128: A.I.R. 1933 Mad. 367.

⁷⁹ 62 Cal. 417: 39 C.W.N. 248: 60 C.L.J. 469: A.I.R. 1935 Cal. 279.

The Allahabad High Court has held that the determination of the question whether an additional court-fee should be paid or not, marks the termination of a definite stage of the suit and settles the controversy between the parties on the particular point. The order of the trial Court directing the payment of additional court-fees amounts to a "case decided" within the meaning of sec. 115 of the Civil Procedure Code.⁸⁰ But the Oudh Judicial Commissioners' Court has held that no revision lies to the High Court from an order of the Court below calling upon the plaintiff to make good the deficiency of any amount of the court-fees paid by him. For, the mere decision of a preliminary point regarding court-fees is not a decision of a 'case' within the meaning of sec. 115.⁸¹

S. 476,
Cr. P. C.

Where an order under sec. 476 of the Criminal Procedure Code is passed by a Civil or Revenue Court, sec. 439 of the Criminal Procedure Code has no application and the High Court can exercise its revisional powers under sec. 115 of the Civil Procedure Code.⁸² Where an order withdrawing a complaint was made by the District Judge, the application in revision against that order was held to be governed by sec. 115 of the Civil Procedure Code.⁸³

Ss. 193,
465, 471,
I. P. C.

Where the trial Court after an enquiry came to the conclusion that the defendant in the suit ought to be prosecuted under secs. 193, 465 and 471 of the Indian Penal Code and sent a complaint but on appeal the appellate Court came to a finding that the materials on the record did not justify the hope that the prosecution would end in conviction and set aside the order of the trial Court, it was held that the appellate Court did not act without jurisdiction or irregularly in the

⁸⁰ *Lakshmi Narain v. Dip Narain*, 55 All. 274.

⁸¹ *Paras Nath v. Ran Bahadur*, 1935 O.W.N. 1158; A.I.R. 1936 Oudh 22: 158 I.C. 949 (F.B.).

⁸² *Surendra Nath v. Susil Kumar*, 59 Cal. 68: 35 C.W.N. 775: 134 I.C. 1063; A.I.R. 1931 Cal. 604.

⁸³ *Sheopal v. Mahendra Narain*, 35 Cr.L.J. 432: A.I.R. 1934 Pat. 55: 147 I.C. 535.

exercise of its jurisdiction and the High Court would not interfere with the order in revision.⁸⁴

Where the lower Court erroneously throws the onus of proof on the wrong side, it erros in law that vitiates its finding. The High Court in such a case will interfere in revision and set right the order.⁸⁵ Where the lower Court in framing the issues definitely places the burden of proof wrongly and refuses to recast the issues correctly, where the matter is one of considerable importance, the High Court will properly interfere in revision.⁸⁶

The High Court is not bound to interfere in revision if substantial justice has been done. An order setting aside an award is not open to revision. The order of the Judge that the award cannot stand is entirely within his jurisdiction. Besides such order cannot come within the purview of sec. 115 of the Civil Procedure Code, because it is not a case which has been decided but is in the nature of an interlocutory order preceding the hearing of the case itself.⁸⁷ But where the Judge refuses to consider the objections to an award though filed within time, he refuses to exercise a jurisdiction which is vested in him, and a revision application against it should be allowed.⁸⁸ Where the award made by the arbitrators on reference is impeached on the ground that the reference itself is bad, the High Court can revise the proceedings and, if necessary, set aside the order of reference with the result that the award will fall through.⁸⁹ Where the Court has not followed the

No interference where substantial justice has been done.

⁸⁴ Ali Naqi *v.* Baqridi, 58 All. 351.

⁸⁵ Bhupendra Krishna *v.* Abdur Rahman, 61 C.L.J. 18: A.I.R. 1935 Cal. 710; C. S. Pillay *v.* K. K. Konar, A.I.R. 1935 Rang 131

⁸⁶ Sri Tripura Sundari Cotton Press *v.* Venkata Gurunadha Rama, 69 M.L.J. 239: 42 L.W. 405: A.I.R. 1935 Mad. 784.

⁸⁷ Ganga Bhagat *v.* Sokhi Ram, 15 P.L.T. 693: 152 I.C. 309: A.I.R. 1934 Pat. 550.

⁸⁸ D. B. Das *v.* Dayalal & Sons, A.I.R. 1933 Rang. 38: 142 I.C. 835.

⁸⁹ Mahadeo Prasad *v.* Badri Das, 50 All. 955: 26 A.L.J. 1009: 110 I.C. 881.

procedure laid down by the Civil Procedure Code and does not allow a party the time which the law allows him to make objections, but proceeds to pass at once a decree in accordance with the award, then it cannot be said that there is any defect in the award itself, and under sub-para. (2) of para. 16 no appeal would lie, but the High Court may exercise its revisional jurisdiction under the provisions of sec. 115 of the Civil Procedure Code.⁹⁰

An error on a question of limitation is not necessarily such an error as would bring the case within the purview of sec. 115 of the Civil Procedure Code.⁹¹ Where a Court, in dealing with an application to set aside an abatement, fails to take into consideration the period of limitation prescribed by law for applying to set aside the order, the order setting aside the abatement is bad and will be set aside in revision.⁹² In the case of *Leah Elias Joseph Solomon v. H. C. Stork*,⁹³ it was held that although the Land Acquisition Collector is not a Court within the meaning of sec. 115 of the Civil Procedure Code or sec. 107 of the Government of India Act and consequently that section does not strictly apply to an order by the Collector, refusing to make a reference to Court under sec. 18 of the Land Acquisition Act, still there being no other remedy outside the jurisdiction of chartered High Courts, the High Court has power to revise such an order. In the judgment of the above case their Lordships (Jack and Khundkar, JJ.) observed: "A preliminary point was raised that

L. A. Act.

⁹⁰ Ravibhai v. Dahyabhai, 45 Bom. 832: A.I.R. 1921 Bom. 32.

⁹¹ Tamirannessa v. Kachhiman, 32 C.W.N. 98: A.I.R. 1928 Cal. 202: 106 I.C. 561; Satish Chandra v. Rakhal Chandra, 47 C.L.J. 62: A.I.R. 1928 Cal. 189: 107 I.C. 733; Madho Rao v. Govind, 103 I.C. 113; Hardwari Mal v. Chironji Lal, A.I.R. 1926 Lah. 355: 93 I.C. 855; Bibi Zainabi v. Paras Nath, 2 Pat. 800: 4 P.L.T. 491: A.I.R. 1924 Pat. 37.

⁹² Hem Kanta v. Manoj Prova, A.I.R. 1926 Cal. 444: 87 I.C. 173.

⁹³ 61 Cal. 1041: 38 C.W.N. 844: 60 C.L.J. 184: A.I.R. 1934 Cal. 758: 153 I.C. 938.

this Court has no jurisdiction in revision, either under sec. 115 of the Code of Civil Procedure or under sec. 107 of the Government of India Act.

The High Court has no powers of revision unless the case is decided by a Court subordinate to the High Court, *viz.*, subject to the appellate jurisdiction of the High Court. It is true that a decision of the Collector as to the amount of an award may indirectly come before the High Court in its appellate jurisdiction where a reference has been made to the Civil Court under sec. 18 of the Land Acquisition Act, and it is argued that on this ground the orders of the Collector are subject to revision just as the orders of the Rent Collector under the Calcutta Rent Act have been held to be subject to the revision of the High Court in the case of *H. D. Chatterjee v. L. B. Tribedi*⁹⁴ and *Allen Bros. & Co. v. Bando & Co.*⁹⁵ The fact remains, however, that the Collector cannot be said to be a Court within the meaning of sec. 115 of the Civil Procedure Code or of sec. 107 of the Government of India Act. There is abundant authority for this view. Reference may be made to the cases of *British India Steam Navigation Co. v. The Secretary of State for India*,⁹⁶ *Ezra v. Secretary of State for India in Council*,⁹⁷ *Ezra v. Secretary of State and others*,⁹⁸ *Abdul Sattar Sahib v. The Special Deputy Collector, Vizagapatam Harbour Acquisition*,⁹⁹ *Balkrishna Daji Gupte v. The Collector, Bombay Suburban*,¹⁰⁰ and *M. H. Mayet v. Land Acquisition Collector, Myingyan*.¹⁰¹

The petitioner on the other hand relies on the cases of this Court in which it has been held that this Court is entitled to revise an order of the Land Acquisition Collector refusing to refer a case to the

⁹⁴ 49 Cal. 528: 26 C.W.N. 78.

⁹⁵ 49 Cal. 931: 26 C.W.N. 845.

⁹⁶ 15 C.W.N. 87.

⁹⁷ 32 I.A. 93: 32 Cal. 605: 9 C.W.N. 454.

⁹⁸ 30 Cal. 36: 7 C.W.N. 249.

⁹⁹ 47 Mad. 357.

¹⁰⁰ 47 Bom. 699.

¹⁰¹ 12 Rang. 275.

Civil Court under sec. 18 of the Act, *viz.*, *Administrator-General of Bengal v. Land Acquisition Collector*¹⁰² and *Krishna Das Roy v. The Land Acquisition Collector of Pabna*.¹⁰³ These decisions have not been overruled and the petitioner supports them by reference to the decisions in *Saraswati Pattack v. The Land Acquisition Deputy Collector of Champaran*,¹⁰⁴ *Secretary of State for India v. Jiwan Bakhsh*¹⁰⁵ and *Haridas Pal v. The Municipal Board, Lucknow*;¹⁰⁶ and to the cases under the Rent Act, *H. D. Chatterjee v. L. B. Tribedi*¹⁰⁷ and *Allen Bros. & Co. v. Bando & Co.*¹⁰⁸

There can be no question that the act of the Collector in refusing to make a reference under sec. 18 of the Land Acquisition Act is a judicial act. The petition for a reference corresponds to the plaint in a suit. It initiates judicial proceedings in the Land Acquisition Court which by virtue of sec. 54 of the Land Acquisition Act is a Court subordinate to the High Court, and the petition for reference is practically a part of those proceedings. Though, therefore, technically sec. 115 of the Civil Procedure Code may not be applicable, it was hardly the intention of the legislature that there should be no remedy against the wrongful rejection of an application for reference. It may be noted in this connection that no relief under sec. 45 of the Specific Relief Act could be obtained outside the jurisdiction of the Chartered High Courts. In these circumstances and in view of the previous rulings of this Court—*Administrator-General of Bengal v. Land Acquisition Collector* (12 C.W.N. 241) and *Krishna Das Roy v. The Land Acquisition Collector of Pabna* (16 C.W.N. 327)—we will not decide against the petitioner on the preliminary point.”

¹⁰² 12 C.W.N. 241.

¹⁰³ 16 C.W.N. 327.

¹⁰⁴ 2 P.L.J. 204.

¹⁰⁵ 36 I.C. 213.

¹⁰⁶ 22 I.C. 652.

¹⁰⁷ 49 Cal. 528; 26 C.W.N. 78.

¹⁰⁸ 49 Cal. 931; 26 C.W.N. 845.

In the case of *Leah Elias Joseph Solomon v. H. C. Stork*,¹⁰⁹ the High Court interfered under sec. 115 as no relief under sec. 45 of the Specific Relief Act could be obtained by the petitioner in that case as the property acquired in that case was outside the original jurisdiction of the High Court. In the case of *Gopinath Shah v. The First Land Acquisition Collector, Calcutta*,¹¹⁰ it has been held that, assuming that a Land Acquisition Collector when acting under sec. 18 of the Land Acquisition Act is a Court, he is not a Court subordinate to the High Court, and consequently the High Court has no power to interfere under sec. 115 of the Civil Procedure Code with an order made under sec. 18 of the Land Acquisition Act by a Collector. In that case Nasim Ali, J., observed: "There is a divergence of judicial opinion whether the Collector while dealing under sec. 18 is a Court within the meaning of sec. 115 of the Code. The conflicting views expressed in the reported cases are:—(1) a Collector acts as an administrative officer when making a reference under sec. 18 and is therefore not a Court. See *Bhajani Lal v. Secretary of State*,¹¹¹ *Balkrishna Daji Gupte v. The Collector, Bombay Suburban*,¹¹² *M. H. Mayet v. Land Acquisition Collector, Myingyan*,¹¹³ and *Bhagaban Das Shah v. The First Land Acquisition Collector*.¹¹⁴ (2) A Collector acts judicially while dealing with an application under sec. 18 but is not a Court. See *Abdul Sattar Sahib v. The Special Deputy Collector, Vizagapatam Harbour Acquisition*,¹¹⁵ and *Bhajani Lal v. Secretary of State* (1932 A.L.J. 769 (S.B.)). (3) A Collector acts judicially while acting under sec. 18 and is a Court. See *The Administrator-General of Bengal v. The Land*

¹⁰⁹ 38 C.W.N. 844.

¹¹⁰ 42 C.W.N. 212.

¹¹¹ 1932 A.L.J. 769 (S.B.).

¹¹² 47 Bom. 699.

¹¹³ 12 Rang. 275.

¹¹⁴ 41 C.W.N. 1301.

¹¹⁵ 47 Mad. 357 (F.B.).

Acquisition Collector, 24-Parganas,¹¹⁶ *Krishna Das Roy v. The Land Acquisition Collector of Pabna*,¹¹⁷ *Leah Elias Joseph Solomon v. H. C. Stork* (38 C.W.N. 844) and *Saiyid Ahmad Ali Khan Alawi, Raja v. The Secretary of State for India in Council*.¹¹⁸

On the question whether the Collector (assuming that he is a Court while dealing with applications under sec. 18 is a Court) is subordinate to the High Court within the meaning of sec. 115 of the Code, a Full Bench of the Madras High Court has observed as follows:—

“Assuming that the Collector is a Court, is he a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure? In my judgment, he is not. There is no power of appeal from his decision to any one, either to the District Court or to this Court. There is nothing in the Act to show that he is in the true sense of the word in any way subordinate to the High Court. As far as Madras is concerned, the Courts recognised are those Courts, which are referred to in various Statutes, such as the Madras Civil Courts Act. His Court, if a Court at all, must be a Civil Court. The Civil Courts are enumerated in the Civil Courts Act and the Court of the Collector sitting under the Land Acquisition Act finds no place in the enumeration. On the whole, I think, I must come to the conclusion that, even if the Collector, exercising his functions under section 19, although those functions are, as I have pointed out, judicial functions, is a Court, he is not a Court subordinate to the High Court.”

The question again came up for decision before the Special Bench of the Allahabad High Court in the case of *Bhajan Lal v. Secretary of State*.¹¹⁹ In that case King, J., who delivered the judgment of the

Bhajan Lal
v.
Secy. of
State.

¹¹⁶ 12 C.W.N. 241.

¹¹⁷ 16 C.W.N. 327.

¹¹⁸ 7 Luck. 578.

¹¹⁹ 1932 A.L.J. 769 (S.P.).

Special Bench observed as follows:—"If it be admitted for the sake of argument that the Collector is a "Court" we think that he is certainly not a Court subordinate to the High Court. The High Court has no appellate jurisdiction over the Collector and for that reason it is difficult to hold that the Collector is a Court subordinate to the High Court, even if he is a "Court" in any sense of the word. Section 55, Land Acquisition Act, gives power to the Local Government to make rules for the guidance of Officers in all matters connected with the enforcement of the Act. This would in our opinion, include power to make a rule for the guidance of a Collector when receiving an application under Section 18. No authority is given to the High Court to make rules for the guidance of the Collector and for this reason also we think that the Collector cannot be held to be subordinate to the High Court."

In *The Administrator-General of Bengal v. The Land Acquisition Collector, 24-Parganas*¹²⁰ and in *Krishna Das Roy v. The Land Acquisition Collector of Pabna*,¹²¹ it was assumed that if the Collector acting under sec. 18 was a Court, he must be a Court subordinate to the High Court. The question whether he is a Court subordinate to the High Court was neither raised nor decided in those two cases. In the case of *Leah Elias Joseph Solomon v. H. C. Stork*¹²² this Court observed as follows:—

"The High Court has no powers of revision unless the case is decided by a Court subordinate to the High Court, *viz.*, subject to the appellate jurisdiction of the High Court. The fact remains, however, that the Collector cannot be said to be a Court within the meaning of Section 115 of the Civil Procedure Code or of section 107 of the Government of India Act."

¹²⁰ 12 C.W.N. 241.

¹²¹ 16 C.W.N. 327.

¹²² 38 C.W.N. 844.

It is true that in that case the learned Judges have observed that the petition for reference under sec. 18 is practically a part of the proceeding before the Land Acquisition Court. But the learned Judges in that case have also observed that technically speaking sec. 115 of the Code of Civil Procedure may not be applicable."

It is irregular for the Court taking the initiative in suggesting that the parties should take the special oath, inasmuch as he asked them to swear touching books which he represented to them to be sacred books. The Court might have been influenced by what took place in reference to this special Oath. Where the Court adopted such a procedure, the High Court in revision under section 25 of the Provincial Small Causes Court Act ordered a retrial in the interests of justice.¹²³

In the case of *Manmatha Nath Koer v. Mahadeb Ghosh*,¹²⁴ it has been held that the High Court ought not to interfere under sec. 115 of the Code of Civil Procedure a decision of the District Judge made on an application before him in terms of the proviso to section 88 of the Bengal Village Self Government Act, especially when the District Judge does not exceed the wide powers conferred upon him under section 88 of the Act. The power conferred on the District Judge by the legislature to review the decision of the Union Court is wholly unfettered and is not limited to a reconsideration of any point of law or procedure which may have arisen in the Union Court but such power is wide enough to permit of a reconsideration of the evidence and accordingly if he thinks the justice of the case so demands the District Judge can reverse a decision of the Union Court on a pure question of fact. In that case Costello, J., observed: "The proviso to section 88 is likely to destroy or at any rate to derogate from the effect and value of the opening

Bengal
Village
Self-Govt.
Act.

¹²³ *Giribala v. Madar Gazi*, 56 C.L.J. 79.

¹²⁴ 55 C.L.J. 563.

sentence of the section, because it is obvious to any one who has had experience of litigation in this country that it is inevitable that advantage will be taken of that proviso almost as a matter of course and on every possible occasion by the party who has been unsuccessful before the Union Court. The unsuccessful party will be advised or instigated—I am afraid in practically every case—to make an attempt, if only as a forlorn hope, to upset the decision of the Union Court by moving the District Judge under the proviso to section 88 and thus secure what is in effect an appeal from the decision of the Union Court and then, as in the present instance, if the District Judge thinks fit to exercise the powers conferred upon him by that proviso, and reverse the decision of the trial Court the matter will be carried a step further by the then unsuccessful party making an application to this Court under section 115 of the Civil Procedure Code. In this way the whole purpose underlying the establishment of Union Courts will be set at naught.”

Sec. 93 of the Bengal Village Self Government Act which provides that the provisions of the Civil Procedure Code would not apply to suits before the Union Court, does not affect the powers of the High Court derived from sec. 115 of the Civil Procedure Code or sec. 107 of the Government of India Act. Where one of the two defendants in a suit for rent before a Union Court applied under sec. 81 of the Bengal Village Self Government Act for time in order to move for transfer of the case to the Munsif's Court, but the application was refused on the ground that the other defendant objected to such transfer and the suit being thereafter decreed, the District Judge, on being moved, refused to interfere and did not consider whether there had been a failure of justice, it was held that the Union Court was bound to give time for moving for transfer of the case and the order of the District Judge and the decree of the Union Court were both liable to be set aside in revision.¹²⁵

¹²⁵ *Khudiram v. Surendra Mohan*, 38 C.W.N. 986.

Power of
Superinten-
dence of
High Court.

The power of superintendence over subordinate Courts possessed by the High Court under sec. 15 of the Charter Act, 1861 and under sec. 107 of the Government of India Act, 1915, which replaces it, was interpreted as including the power of judicial superintendence. Consequently under those Acts, the High Court could interfere with judicial orders of the Presidency Small Causes Court, as by sec. 6 of the Presidency Small Cause Courts Act, 1882, that Court is subject to the superintendence of the High Court. But revision is not the same thing as superintendence, and there is nothing in the Code of Civil Procedure or in any other provision of law authorising the High Court to interfere under sec. 115, C. P. Code, with the orders of the Presidency Small Causes Court. Still, however, under the practice established by judicial decisions in Calcutta, the High Court can and does interfere under sec. 115 with the decrees and orders of the Small Causes Court.¹²⁶

Revision
and Superin-
tendence
different.

Where the petitioner's application before the Debt Settlement Board under sec. 8 of the Bengal Agricultural Debtors Act was dismissed and the High Court was moved, it was held that the High Court has no power to revise under sec. 115 of the Civil Procedure Code, an order of an appellate Officer, appointed under the Bengal Agricultural Debtors Act. Such appellate officer is not a "Civil Court" within the meaning of cl. 16 of the Letters Patent, which does not cover Courts set up by a special statute for a special purpose.¹²⁷ In the case of *Harish Chandra Pal v. Chandra Nath Saha*,¹²⁸ the Debt Settlement Board had come to express findings as to the amount of the debt and as to whether the judgment-debtors are debtors within the meaning of the Bengal Agricultural Debtors Act. The Board sent a notice under sec. 34 of the Act to the Subordinate Judge asking him to stay proceed-

B. A. D.
Act.

¹²⁶ *Mahomed Yusuf v. Abdul Majid*, 42 C.W.N. 602.

¹²⁷ *Abdulla Shah v. Giridhari*, 42 C.W.N. 507.

¹²⁸ 42 C.W.N. 411.

ings in the execution case pending against the said judgment-debtors. The Subordinate Judge held, overriding the decision of the Board, that the debtors were not debtors within the meaning of sec. 2 (9) of the Act and that they did not ordinarily reside within the jurisdiction of that Board, and accordingly holding the notices issued by the Board under sec. 34 to be illegal, invalid and without jurisdiction, refused to stay the proceedings of the execution case. The High Court was moved under sec. 115 of the Civil Procedure Code and it was held that the Court below acted in the exercise of its jurisdiction illegally in refusing to stay the proceedings in accordance with the notice under sec. 34 of the Act, and set aside the order complained of.

In the case of *Tara Prosad Sukul v. Abdul Kasim Khundkar*,¹²⁹ it has been held that the High Court has no power to interfere in revision under sec. 115 of the Civil Procedure Code with a decision of the District Magistrate on an application made to him under Rule 1 (A) of the Election Rules framed under the Bengal Local Self Government Act, whatever the defects of such a decision may be. Mr. Justice S. K. Ghose observed in that case: "The initial difficulty in the way of the petitioner is that an application under sec. 115 of the Code of Civil Procedure does not lie in a matter like this..... It is contended that there is no express repeal of any provisions of the Code of Civil Procedure which is not mentioned, as the Indian Limitation Act is mentioned in the succeeding sec. 149. But the language of sec. 148 is clear enough and does not admit of the interpretation that the powers reserved to this Court by sec. 115 of the Code of Civil Procedure are saved. It has been contended that the word "final" only means that it is not open to appeal. But the word "final" has to be taken along with the succeeding words "and shall not

Bengal
Local Self-
Govt. Act.

¹²⁹ 42 C.W.N. 441. The same view was taken in *Sachindra Nath v. Surya Kanta*, 42 C.W.N. 54.

be questioned in any Court," and the plain meaning of those words is that the decision is not subject either to appeal or to revision. This, I find, is expressly held in two recent cases of this Court, *Bon Behari Mukherjee v. Makhan Lal Mukherjee*¹³⁰ and *Phanindra Nath Sarkar v. Moulvi Dedar Hussain Khan Choudhury*.¹³¹ The learned advocate for the petitioner has further contended that sec. 107 of the Government of India Act, 1919, may be applied. The petition itself does not mention the Government of India Act and it is conceded that so far as sec. 224 of the present Government of India Act is concerned, it does not help the petitioner. In any case the old Government of India Act, 1919, would not be applicable, because the cause of action arose and the petition was filed after the new Government of India Act had come into force. For the petitioner it has been strongly contended that this Court should not surrender its jurisdiction lightly in favour of a Special Tribunal. But the point cannot be decided solely on a presumption against ousting the established and creating a new jurisdiction. Sec. 9 of the Code of Civil Procedure recognises that the jurisdiction of the Civil Courts may be limited expressly or impliedly. If there is a special Tribunal appointed by an Act to decide questions as to rights created by that Act, then the jurisdiction of that Tribunal is exclusive, except in so far as is expressly provided for or necessarily implied. It cannot be said that there is an ouster of the jurisdiction of the ordinary Courts because such Courts never had any such jurisdiction. In this connection I would draw attention to the remarks of Sir Lawrence Jenkins in the case of *Bhaishankar Nanabhai v. The Municipal Corporation of Bombay*¹³² where he was dealing with a question under the Bombay Municipal Act of 1888. Taking all these

¹³⁰ 42 C.W.N. 282.

¹³¹ 42 C.W.N. 283.

¹³² 31 Bom. 604.

matters into consideration I think that this Court cannot interfere under sec. 115 of the Code of Civil Procedure and that this Rule must stand discharged."

In the case of *Bon Behari Mukherjee v. Makhan Lal Mukherjee*,¹³³ upon a petition under sec. 36 of the Bengal Municipal Act, the District Judge of the 24-Parganas set aside the election of the petitioner as a Municipal Commissioner, and directed a fresh election. Against that decision the High Court was moved to interfere in revision. Their Lordships (Bartley and Nasim Ali, JJ.) held that an order by a judge setting aside an election on an election petition on the ground that the nomination paper of a rival candidate was improperly rejected under sec. 38 (d) of the Bengal Municipal Act is final and cannot be revised by the High Court.

In the case of *Phanindra Nath Sarkar v. Moulvi Dedar Hussain Khan*,¹³⁴ it has been held that the High Court has not power to interfere in revision with a decision of the authority empowered to decide election disputes by the Local Government under sec. 138 (a) of the Bengal Local Self Government Act.

The District Judge passed certain orders under the Burma Rural Self Government Act on an election petition, and they being challenged in revision, it was held that the orders could not be interfered with as there was no want of jurisdiction.¹³⁵ A Judge deciding an election petition under sec. 15 of the Bombay City Municipal Act is not a Court but a *persona designata* and his decision cannot be interfered with in revision.¹³⁶ Where the District Judge acting under the Mandalay Election Rules decided an objection to an election acted as a *persona designata* and his deci-

¹³³ 42 C.W.N. 282.

¹³⁴ 42 C.W.N. 283.

¹³⁵ *U Ba Thwin v. Maung Ba Shein*, 10 Rang. 517: 140 I.C. 782.

¹³⁶ *Jagmohan v. Venkatesh*, 35 Bom.L.R. 89: A.I.R. 1933 Bom. 105: 142 I.C. 378

sion could not be interfered in revision.¹³⁷ Where a District Judge passed an order which he had jurisdiction to make restraining a returning officer from holding an election, the fact that the order passed would result in great inconvenience to the public would not amount to an illegality or material irregularity in the exercise of his discretion.¹³⁸

The Calcutta High Court has held in *Nara Narayan Mondal v. Aghore Chandra Ganguly*¹³⁹ that the "District Judge" referred to in and contemplated by secs. 36-44 of the Bengal Municipal Act is not a *persona designata* but the Court of the District Judge over which the High Court has power of superintendence under sec. 107 of the Government of India Act. In a separate judgment Mr. Justice Khundkar dealt with and discussed all the cases relevant on the point of the other High Courts. But in this case it was not expressly decided whether the High Court has power of interference under sec. 115 of the Civil Procedure Code. This point came up for decision in the case of *Radha Nath Saha v. Hari Mohan Saha*,¹⁴⁰ where it has been held that the High Court has no power under sec. 115 to interfere with an order of the District Judge in an election dispute under sec. 39 of the Bengal Municipal Act. The cases of *Benode Behari Chatterjee v. Girindra Nath Roy Choudhury*,¹⁴¹ *Nara Narayan Mondal v. Aghore Chandra Ganguly* *Khudiram Kundu v. Surendra Mohan Chakravarty*¹⁴² and *Bon Behari Mukherjee v. Makhan Lal Mukherjee*¹⁴³ were referred to and discussed in the judgment of the case.

Where the High Court, in its appellate jurisdiction, has directed security to be furnished by a party

¹³⁷ *U. Ba Pe v. U ba Shwe*, 11 Rang. 1: 142 I.C. 80.

¹³⁸ *Municipal Board v. Mahomed Ali*, A.I.R. 1933 All. 343: 143 I.C. 143.

¹³⁹ 39 C.W.N. 971.

¹⁴⁰ 42 C.W.N. 647.

¹⁴¹ 38 C.W.N. 500.

¹⁴² 38 C.W.N. 986.

¹⁴³ 42 C.W.N. 282.

to the satisfaction of the lower Court or of the Registrar, the decision of such authority on the sufficiency of the security cannot be questioned by means of an appeal or an application and the High Court cannot go behind his finding. The High Court, however, can review its order on proper grounds, such as that the authority designated has not acted in accordance with the order or acted improperly or has not come to any finding on the sufficiency or otherwise of the security.¹⁴⁴ Where the lower appellate Court accepts an appeal which is incompetent, the High Court may interfere in revision and set aside its order.¹⁴⁵ A suit for recovery of rent valued at less than rupees fifty was decreed *ex parte* and thereafter an application was made under Or. 9, r. 13, Civil Procedure Code, for setting aside that decree and that was rejected. On appeal the order of the Munsif was set aside. Then the High Court was moved in its revisional jurisdiction. In the revision case an objection was taken that the appellate Court had no jurisdiction to hear and determine the appeal from the order of the Munsif in view of the provisions of sec. 153 of the Bengal Tenancy Act. It was held that B. T. Act. the order passed by the Munsif on an application under Or. 9, r. 13 of the Civil Procedure Code, is an order passed in the suit and as such an appeal was barred under sec. 153 of the Bengal Tenancy Act.¹⁴⁶ Where a Munsif who was empowered to exercise final jurisdiction under sec. 153 (b) of the Bengal Tenancy Act set aside a sale held in execution of a decree for rent at a claim not exceeding Rs. 50, on the ground that the processes of the sale were not served and observed that this might be due to fraud on the

¹⁴⁴ *Bibhabati v. Ramendra Narayan*, 42 C.W.N. 188.

¹⁴⁵ *Khushi Ram v. Hakim Ali*, 35 P.L.R. 431: A.I.R. 1934 Lah. 540: 152 I.C. 622; *Somasundaram v. Muthumanicka*, 36 L.W. 646: 1932 M.W.N. 1244: 139 I.C. 167: A.I.R. 1932 Mad. 714; *Tota Ram v. Shibban Lal*, 13 Lah. 798: 33 P.L.R. 463: 140 I.C. 48; *Lachhu v. Mohan Lal*, 157 I.C. 900: A.I.R. 1936 Lah. 83.

¹⁴⁶ *Bodiur Rahaman v. Mokram Ali*, 56 C.L.J. 145.

part of the decree-holder but there was no finding of fraud which could be said to be independent of the irregularity of the proceedings in publishing and conducting the sale, and on appeal by the auction-purchaser the District Judge set aside the Munsif's decision and confirmed the sale, and against that order the judgment-debtor moved the High Court under sec. 115 of the Civil Procedure Code. It was held that the irregularity found by the Munsif was covered by the Explanation to sec. 153 of the Bengal Tenancy Act and no appeal lay to the District Judge from the decision of the Munsif under that section. The order of the District Judge was set aside as being without jurisdiction and that of the Munsif setting aside the sale was restored.¹⁴⁷ Where a decree was obtained not against the proper person who represented the estate and the estate was sought to be sold in execution of such a decree, it was held in revision that the case fell within the principle of *Khirajmal v. Diam*¹⁴⁸ and the decree was liable to be set aside for want of jurisdiction.¹⁴⁹ Where the lower Court enforced the landlord's right of pre-emption in a case in which sec. 182 of the Bengal Tenancy Act was not effective to bring the homestead in question within the scope of sec. 26 (f), the lower Court's order was without jurisdiction and could be set aside in revision.¹⁵⁰ A Court executing a rent decree has no jurisdiction to refuse execution of the decree against the property of the judgment-debtor other than the tenure in arrears or to direct that the decree-holder must proceed in the first instance against the defaulting tenure. An order passed by the executing Court directing the decree-holder to proceed against the tenure in arrears within 7 days and dismissing the execution case for non-compliance with that order is wrong and insupport-

Khirajmal
v.
Diam.

¹⁴⁷ *Bindubashini v. Prabhat Chandra*, 38 C.W.N. 1183.

¹⁴⁸ 32 Cal. 296.

¹⁴⁹ *Ananga Mohan v. Nawab Habibulla*, 53 C.L.J. 415: 134 I.C. 305: A.I.R. 1931 Cal. 673.

¹⁵⁰ *Raj Kumar v. Shib Chandra*, 36 C.W.N. 788: A.I.R. 1932 Cal. 857: 139 I.C. 765.

able and is liable to be set aside in revision. Sec. 61 empowers an appellate Court of its own motion or on the application of the Collector to take into consideration the order of the subordinate Court admitting an instrument in evidence upon payment of the duty and penalty, but for one purpose merely, that is, for the purpose of ascertaining whether Government revenue has suffered; whether a higher duty and penalty than that required by the Court of the first instance ought to have been demanded from the person filing the document.¹⁵¹

The language in sec. 25 of the Provincial Small Causes Courts Act states that the High Court may satisfy itself that the decree or order passed by the Small Cause Court was according to law. The expression "according to law" is parallel to language in sec. 100 (1) (a) of the Civil Procedure Code, and limits the High Court in revision to grounds of law and it does not cover a revision on a question of fact.¹⁵² An application for revision under sec. 25 of the Provincial Small Cause Courts Act has a much larger scope than one under sec. 115 of the Civil Procedure Code, but it cannot be said that a clear finding of the Small Cause Court can be revised or modified by the High Court upon the sole ground that the balance of evidence was in favour of the applicant. It is not within the province of the High Court to make an appraisal of the value or weight of the finding of the Court below. The High Court will not interfere in revision with the decision of the lower Court on a pure question of fact unless the judgment of the lower Court is perverse. It cannot interfere on the ground that the decision is not in accordance with law.¹⁵³ Where it appears that some substantial injustice to a

Provincial
S. C.C. Act.

¹⁵¹ *Punchanund v. Taramoni*, 12 Cal. 64; *Chinnaya v. Ramaya*, 4 Mad. 140.

¹⁵² *Mahadeo Prasad v. Dharam Nand*, A.I.R. 1935 All. 372: 159 I.C. 35.

¹⁵³ *Abdul Qadir v. Narendra*, A.I.R. 1931 All. 210: 130 I.C. 289.

party has directly resulted from a material misapplication or misapprehension of law or from a material error in procedure the High Court should interfere in revision; but where substantial justice was done to the parties though there was not strict compliance with the provisions of sec. 17 of the Provincial Small Cause Courts Act, the High Court should refuse to interfere.¹⁵⁴ Where the findings of fact are based on or involve assumptions or inferences which there is nothing in fact or probability to support, or are not justified by sufficient evidence, or where the finding is opposed to the evidence or on flagrant misinterpretation or disregard of evidence, or if injustice would otherwise be done, the Court has power to interfere in revision.¹⁵⁵ Where on the face of the Small Cause Court's decision it appears that the evidence of the plaintiff has not been properly considered and the suit has been dismissed, the High Court would interfere in revision.¹⁵⁶ Where the finding of fact made by the Small Cause Court was based on inadmissible evidence, but the question of its admissibility or inadmissibility was not urged before the Court nor was present to the trying Judge, and no gross miscarriage of justice resulted therefrom, the High Court refused to interfere.¹⁵⁷

Sec. 25, Provincial Small Cause Courts Act, allows the High Court to interfere where by reason of omission to consider material evidence or where by evident mistake in the appreciation of evidence substantial injustice has been done to the party.¹⁵⁸ The High Court will not, in the exercise of its discretionary powers of revision, under sec. 25, interfere with an erroneous decision on a point of limitation,

¹⁵⁴ *Sonkali v. Mahabir*, A.I.R. 1935 All. 190: 158 I.C. 10.

¹⁵⁵ *Padamsi v. Seshrao*, 73 I.C. 1055.

¹⁵⁶ *Parsotam v. Firm Jangali Sao*, A.I.R. 1924 Pat. 354: 77 I.C. 865.

¹⁵⁷ *Chiranji Lal v. Kali*, 70 I.C. 291: A.I.R. 1922 Oudh 130.

¹⁵⁸ *Gowrisankar v. Sashi Bhusan*, 37 C.W.N. 275: A.I.R. 1933 Cal. 501.

where the judgment of the lower Court does substantial justice to the parties.¹⁵⁹ The law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding. If a Court refuses to exercise a jurisdiction vested in it by law upon a misapprehension of the law or an erroneous construction of a statute the High Court has the power to interfere under sec. 115.¹⁶⁰

Where an appellate Court sets aside the judgment of the lower Court on review and then permits withdrawal of the appeal as well as the suit, without liberty to bring a fresh suit on the same cause of action, then although the effect of this order may be to deprive the defendant of the advantage of the judgments in subsequent cases and the High Court may not approve of it, still it would be no ground for interference under sec. 115 of the Civil Procedure Code.¹⁶¹ Where the Court declined to take evidence which the petitioner wished to adduce there would be such an irregularity as would bring the case under the provisions of sec. 115 of the Civil Procedure Code.¹⁶²

A memorandum of appeal, if no appeal lies, ought, in fit cases, to be treated as an application in revision. In the case of *Sudhansu Bhusan Pandey v. Majho Bibi*,¹⁶³ the District Judge rejected a memorandum of appeal in his Court on the ground that it was out of time. The facts on which he held that the appeal in the Court below was out of time may be indicated by reference to the relevant dates. The judgment of the trial Court was passed on the 30th April, 1935, but the decree was not signed till the 15th June, 1935, that is, till about two months and a half later. On the 13th July following, that is, within less than 30 days from the date the decree was signed, the appellant applied

Sudhansu
Bhusan
v.
Majho Bibi.

¹⁵⁹ Charan Dass v. Ram Ratan, A.I.R. 1935 Lah. 137.

¹⁶⁰ Kanai Lal v. Purna Chandra, 34 C.W.N. 733.

¹⁶¹ Saherjan v. Gopal Chandra, 34 C.W.N. 265.

¹⁶² Rosulan Bibi v. Rahamatulla, 34 C.W.N. 763.

¹⁶³ 42 C.W.N. 72.

for certified copies of the judgment and the decree. The requisite court-fee stamps, etc., were notified on the 15th July, and were supplied that very day. The copies were ready for delivery on the 18th July, and the appeal was filed with these copies on the 20th. The office noted that the memorandum of appeal was time-barred, and on that the learned Judge made the following endorsement on the 22nd July:—

“Nothing will persuade me that the appeal is not time-barred when no attempt was made to take a copy of the judgment until 2½ months after it was signed. It makes no odds that the decree was passed late.”

On an appeal to the High Court, Biswas, J., observed in the judgment as follows:—“I am of opinion that even if no appeal lies, this is clearly a case where the memorandum of appeal should be treated as an application in revision. To my mind there could not be a clearer case for interference under sec. 115 It will be seen that the Code of Civil Procedure does not in terms entitle an appellate Court to reject a memorandum of appeal before registering it, on the ground that it is out of time. Or. 41, r. 3 specifies the grounds on which a memorandum of appeal may be rejected, and it is significant that these do not include a ground corresponding to cl. (d) of Or. 7, r. 11, on which a plaint may be rejected. It is not necessary to consider the effect of sec. 107 of the Code. It may be, as Suhrawardy, J., held in *Jnanadasundari Saha v. Madhab Chandra Mala*¹⁶⁴ that in view of the provisions of sec. 107 (2), an appellate Court is invested with all the powers of an original Court and has accordingly the same powers as are conferred upon original Court under Or. 7, r. 11. Even so, for the reasons I have already explained, I must hold that this Court has ample jurisdiction to deal with the case under sec. 115.”

Jnanada-
sundari
v.
Madhab
Chandra.

¹⁶⁴ 59 Cal. 388.

PART XI.

LIMITATION.

SYNOPSIS.

- | | |
|---|---|
| 1. Limitation for Appeal. | 3. Excusing delay under sec. 5, Limitation Act. |
| 2. Exclusion of time required for copies. | 4. Limitation for Revision. |

Art. 152. Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days.	The date of the decree or order appealed from.
Art. 153. Under the same Code to a High Court from order of a Subordinate Court refusing leave to appeal to His Majesty in Council.	Thirty days.	The date of the order.
Art. 156. Under the Code of Civil Procedure, 1908, to a High Court except in the cases provided for by Article 151 and Article 153.	Ninety days.	The date of the decree or order appealed from.

For the purpose of computing the time for appeal the date of the decree must be taken to be the date on which the judgment is pronounced.¹ When the decree is merely amended under sec. 152 of the Civil Procedure Code, the amended decree is the final decree for the purposes of appeal.² Even where the amendment has no relation to the grounds on which the decree is sought to be assailed in appeal, the appellant is entitled to prefer the appeal within the statutory period from the date of the amended decree. Where the decree is signed not on the delivery of judgment but is signed later on, the appellant cannot invoke the aid of sec. 12 of the Limitation Act unless he has applied for copy of judgment and decree before the decree is

¹ *Narayan v. Ramdulari*, 66 I.C. 7; *Narayanaswami v. Krishnasami*, 25 I.C. 67.

² *Aditya Kumar v. Abinash*, 34 C.W.N. 1002; A.I.R. 1931 Cal. 323; *Amar Chandra v. Asad Ali*, 32 Cal. 908; *Vishwanathan v. Ramanathan*, 24 Mad. 646.

signed.³ But the Calcutta High Court has held that under sec. 12 an appellant is entitled to deduct the time between the date of the delivery of judgment and the signing of decree, even though the application is made after the signing of the decree.⁴ In a very recent case of the Calcutta High Court (*Sudhansu Bhusan Pandey v. Majho Bibi*),⁵ Mr. Justice Biswas discussed the question if an appellant is entitled to a deduction of the period between the signing of judgment and the signing of decree and observed as follows:—

Exclusion
of time for
copies.

“Sec. 12 (2) of the Act, however, entitles the appellant to exclude the day on which the judgment was pronounced and the time “requisite” for obtaining a copy of the decree and sub-sec. (3) also provides for exclusion of the time requisite for obtaining a copy of the judgment. It is not necessary to discuss whether the reason for allowing exclusion of the time for procuring these copies is that these documents are required to be annexed to the memorandum of appeal under Or. 41, r. 1, or under the practice of the Courts, though under sec. 96 of the Code of Civil Procedure the appeal is an appeal from a decree and not from a judgment. That this is not so was in fact authoritatively laid down by the Judicial Committee in *Surty v. Chettyar*.⁶ Nor is it necessary to dispute the proposition also laid down in that case that the word “requisite” is a strong word, and may be regarded as meaning something more than “required”, and that it means “properly required,” so that it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his fault. What the appellant did in the present case was to reckon limitation in accordance with what has been the uniform practice of this

Surty v.
Chettyar
(P.C.).

³ *Bechi v. Ahsanullah*, 12 All. 461 (F.B.); *Yamaji v. Antaji*, 23 Bom. 442; *Maung Pa v. Ma Lay*, 7 Rang. 18; A.I.R. 1929 Rang. 116; *Dindyal v. Anopi*, 22 N.L.R. 60; A.I.R. 1926 Nag. 349.

⁴ *Beni Madhub v. Matungini*, 13 Cal. 104 (F.B.).

⁵ 42 C.W.N. 72.

⁶ 55 I.A. 161.

Court ever since a Full Bench of this Court pronounced its decision in the case of *Beni Madhub Mitter v. Matungini Dassi*.⁷ The authority of this case remains wholly unshaken by the decision of the Judicial Committee, in the above case, or in the earlier case of *Pramatha Nath Roy v. Lee*.⁸ It is common sense to hold that until a decree comes into existence, no copy can possibly be granted, and it is difficult to see how in such circumstances there can be any "default" on the part of the appellant, if he does not apply for copy of a document before it comes into existence. There is a difference between the practice of the Original Side of the High Court and that of Courts in the Mofussil in this respect, which must not be lost sight of in interpreting decisions like that of *Pramatha Nath Roy v. Lee*⁸ as to the meaning of the word "requisite" in sec. 12 of the Limitation Act: in the Original Side, steps have to be taken by the parties to have the order or decree drawn up, so the question of promptitude on the part of the appellant in taking such steps becomes material, but in the Mofussil, the signing of the decree is not dependent at all upon any action of the parties: it is a duty which is made obligatory on the Court under the provisions of Or. 20, r. 7 of the Code of Civil Procedure. It seems to me, therefore, that the fact that the decree was not signed should be a simple and sufficing ground for excluding the time between the date of delivery of judgment and the date of signing of the decree, in addition to the period actually taken in obtaining the copy, in so far as an appeal in a Mofussil Court is concerned. It is true that under Or. 20, r. 7, the decree shall bear date, the day on which the judgment was pronounced, but the same rule distinctly contemplates the decree being signed on a different date. I am not unmindful that a Full Bench of the Allahabad High Court has taken a different view from the Full Bench of this Court;

Beni
Madhub
v.
Matungini.

Pramatha
Nath
v.
Lee.

⁷ 13 Cal. 104 (F.B.).

⁸ 49 I.A. 307: 27 C.W.N. 156.

Bechi v. Ahsan-ullah Khan,⁹ and a Division Bench of this Court has also refused to extend the rule laid down by the Full Bench to applications for leave to appeal to His Majesty in Council: *Harish Chandra Rewari v. Chandpur Company, Ltd.*¹⁰ But in matters of procedure I think the constant practice of the Courts ought not to be departed from for the practice of the Court is the law of the Court. See the famous dictum of Coke, C.J., in *Burrowes v. High Commission Court*¹¹ "*cursus curiæ est lex curiæ.*"

In the case of *Pandu v. Rajeswar*,¹² the decree was drawn up 17 months after the judgment was delivered, and it was held by the Nagpur Court that the limitation for the appeal should be counted from the date on which the decree was signed.

Where
period of
limitation
expires when
Court
closed.

Where the period prescribed for the presentation of an appeal expires on a day on which the Court is closed, and the appellant has not obtained copies of the decree and judgment before the closing of the Court and applies for such copies on the date of the reopening of the Court, while his right of appeal still subsists, he is entitled to the benefit of the time requisite for obtaining the copies.¹³

An appeal or application for a review of judgment or leave to appeal may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. The Court must be fully satisfied of the justice of the grounds for extension of time. No definite standard can be laid down to be followed in all cases, but the Court should weigh the facts and circumstances of each case in order to decide if an extension can be granted. In the case of *In re*

Sec. 5,
Lim. Act.

⁹ 12 All. 461.

¹⁰ 39 Cal. 766.

¹¹ (1701) 3 Bulst. 48, 53.

¹² 20 N.L.R. 131; A.I.R. 1924 Nag. 271; 78 I.C. 996.

¹³ *Gobinda Mohini v. Pati Rokhan*, 7 C.L.J. 50 (S.N.); *Tukaram v. Pandurang*, 25 Bom. 586; *Sitaram v. Ramji*, 2 Bom.L.R. 221; *Naman v. Gurditta*, 89 I.C. 437; *Mussammat Atri v. Ramkishan*, 11 Lah. 111.

Manchester Economic Building Society,¹⁴ Lord Bowen observed: "It seems to me that to attempt in any case to lay down a set of iron rails on which the discretion of the Court of Appeal was always to be obliged to run, and to say that the leave of the Court would never be granted, except in certain special circumstances and in a defined way, would be very perilous. The rules leave the matter at large. Of course, it is to be exercised in the way in which judicial power and discretion ought to be exercised, upon principles which are well understood, but which had better not be defined in a case except so far as may be necessary for the decision of that case, otherwise there is the great danger, as it seems to me, of crystallising into a rigid definition that judicial power and discretion which the legislature and the rules of the Court have for the best of all reasons left undetermined and unfettered."

An honest mistake on the part of a litigant caused by erroneous advice given to him by his vakil by reason of which an appeal was not filed until the period of limitation therefor had expired has been held in a number of cases to be a good ground for the application of the provisions of sec. 5 of the Limitation Act. See *Sib Dayal v. Jagannath Prasad*,¹⁵ *Sunderbai v. The Collector of Belgaum*,¹⁶ *Brij Indar Singh v. Kanshi Ram*,¹⁷ *Surendra Mohan v. Mohendra Nath*,¹⁸ *S. C. De v. Mussammat Rajwanti Kuer*,¹⁹ *Kumudini v. Kamala Kanta*,²⁰ *Sarat Chandra v. Saraswati*,²¹ *Ambica Ranjan v. Manikganj Loan Office, Ltd.*,²² *Fakir Chand v. Municipal Committee of Hazro*,²³ *Tin*

¹⁴ (1883) 24 C.D. 488.

¹⁵ 44 All. 636 (F.B.).

¹⁶ 43 Bom. 376; 23 C.W.N. 753 (P.C.).

¹⁷ 45 Cal. 94; 22 C.W.N. 169 (P.C.).

¹⁸ 59 Cal. 781; 36 C.W.N. 420; A.I.R. 1932 Cal. 589; 140 I.C. 662.

¹⁹ 6 P.L.J. 237.

²⁰ 35 C.L.J. 106.

²¹ 34 Cal. 216.

²² 32 C.W.N. 372.

²³ 18 I.C. 37.

Tin Mye v. Maung Ba Saing,²⁴ *Satytraya Sitaram v. Secretary of State*,²⁵ *Nagindas Motilal v. Nilaji Moraba*,²⁶ *Ram Ravji Jambhekar v. Pralhaddas*,²⁷ *Krishna v. Chathappan*,²⁸ *Kunwar Rajendra Bahadur Singh v. Rai Rajeshwar*,²⁹ *Debendra Nath v. Nagendra Nath*.³⁰

***Bona fide*
mistake of
lawyers.**

There is no authority for the view that a mistake of a legal adviser, however gross and inexcusable, if *bona fide* acted upon by a litigant will entitle him to the protection of sec. 5 of the Limitation Act. In cases of negligence or gross want of legal skill of his legal adviser, the suitor has his remedy against the legal adviser and meantime the suitor must suffer. Where the advice given by the pleader was the result of negligence and not of any *bona fide* or considered belief the extension was refused.³¹ Acts of negligence on the part of legal advisers deny the benefit allowable under sec. 5 of the Limitation Act to litigants but afford good grounds of action against the pleaders guilty of such negligence.

Where an appeal has been presented some days too late, it is only the delay of those days which must be explained in making out sufficient cause for an extension of time or what comes to the same thing, why the appeal was not presented on the last day allowed by the statute. Diligence or inaction during the period of limitation antecedent to the last date is not in any way pertinent.³² It is not the appellant's duty to explain each day of delay in order to get extension of time. Diligence or inaction during the period of limi-

²⁴ 1 Rang. 584: A.I.R. 1924 Rang. 148.

²⁵ 45 Bom. 607.

²⁶ 48 Bom. 442.

²⁷ 20 Bom. 133.

²⁸ 18 Mad. 269.

²⁹ 41 C.W.N. 1189 (P.C.): 1937 O.W.N. 771: 1937 Pat. W.N. 689: 18 P.L.T. 878: A.I.R. 1937 P.C. 276: 169 I.C. 769.

³⁰ 30 C.W.N. 479.

³¹ *Bujuboo v. Rajavali*, 31 Bom.L.R. 954: A.I.R. 1929 Bom. 393. See also *Uttam Chand v. Vishan Das*, 144 I.C. 627: A.I.R. 1933 Lah. 568; *Mithoo v. Jamna Prasad*, 9 Luck. 193: A.I.R. 1933 Oudh 523.

³² *Karali Charan v. Apurba Krishna*, 34 C.W.N. 1119.

tation antecedent to the last date is not in any way pertinent.³³

Ignorance of law is not a sufficient cause.³⁴ But Ignorance it cannot be laid down as a general proposition that of law ignorance of law can never be regarded as a sufficient cause. *Bona fide* ignorance of law, where there is no question of bad faith or negligence, can be, in proper cases a good excuse and extension can be granted. The true test is, whether under the peculiar circumstances of the case the appellant acted under an honest though mistaken belief formed with due care and attention.³⁵

An application for revision must be made within 90 days of the passing of the judgment and it is only when sufficient cause is shown that the time can be extended under sec. 5 of the Limitation Act.³⁶ The time spent by the party in prosecuting with due diligence an application for review should be excluded in calculating the time for filing an appeal.³⁷

Limitation
for revision
petition.

Section 14 of the Limitation Act is applicable to suits only, and not to appeals.³⁸ But though this section has no application to appeals, the circumstances contemplated in the section will ordinarily constitute sufficient cause in the sense of sec. 5 for extension of time.³⁹ The *bona fide* prosecution of a proceeding in a wrong Court has been regarded as a ground or a "sufficient cause" within the meaning of sec. 5 for extending the time for filing an appeal.⁴⁰

Sec. 14,
Lim. Act.

³³ Kali Charan *v.* Apurba Krishna, 34 C.W.N. 1119.

³⁴ Bechi *v.* Ahsanullah, 12 All. 461; Sitaram *v.* Nimba Valad, 12 Bom. 320; Brij Indir *v.* Kanshi Ram, 45 Cal. 94 (P.C.); Dial Singh *v.* Buddha Singh, 61 I.C. 327.

³⁵ Krishna Mohan *v.* Surapati, 29 C.W.N. 472; 94 I.C. 929; Rajani *v.* Bistoomani, 46 C.L.J. 40; A.I.R. 1927 Cal. 718; Sheo Prasad *v.* Sheo Bans, A.I.R. 1926 All. 211; 93 I.C. 851; Gulam Shah *v.* Mazaffar, 81 P.R. (1886) (F.B.).

³⁶ Bhukan *v.* Piare Lal, 130 I.C. 839; A.I.R. 1931 All. 218.

³⁷ Pridhanmal *v.* Laloo, 130 I.C. 545.

³⁸ Ardha Chandra *v.* Matangini, 23 Cal. 325; 19 C.W.N. 473; 22 C.L.J. 68.

³⁹ Balwant *v.* Gumani, 5 All. 591.

⁴⁰ Balam *v.* Sham, 23 Cal. 526; Rup Thakurani *v.* Kumud Nath, 22 C.W.N. 594; 46 I.C. 116; Dadabhai *v.* Maneksha, 21 Bom. 552; Krishna *v.* Chathappan, 13 Mad. 269.

PART XII.

Court-fees in Appeal and Revision.

SYNOPSIS.

- | | |
|----------------------|----------------------------------|
| 1. General rule. | 5. Distinct subjects. |
| 2. Mesne profit. | 6 Partition. |
| 3. Personal decree. | 7. Reference by Collector. |
| 4. Foreclosure suit. | 8. Cross-objection. |
| | 9. Appeal dismissed for default. |

General rule
of court-
fees.

The general rule governing appeals is that court-fees must be paid on the amount by which the appellant wishes to reduce or enhance the decree amount. If the appeal is merely for reversing the decree of the trial court and no question accounting arises, then the court-fee payable in appeal should be the same as the court-fee payable on the plaint in the suit. A suit may change its nature in appeal and though the original suit may be for redemption, there may be no question raised in appeal as to the right to redeem and the appeal may be merely in respect of the amount which the Court of the first instance has held to be payable. In such a case the subject-matter of the appeal would clearly not be the same as in a suit falling under sec. 7 (ix) but the court-fee would be payable *ad valorem* on the sum in dispute in accordance with Art. 1 of Sch. I of the Court Fees Act. If the suit were however dismissed the plaintiff-appellant can prefer an appeal paying court-fee under sec. 7 (ix) (*Har Lal v. Siri Ram*, 32 P.L.R. 591 : A.I.R. 1931 Lah. 633) In an appeal against a decree for redemption of mortgage, the mortgagee-appellant paid court-fee with respect to the redemption of half the land, stating that he contested the decision of the Court below only in respect of half the land. He also claimed interest on an additional mortgage executed in his favour over the same land but did not pay separate

court-fee. It was held that although the matter might have been different if the appellants had claimed that the whole suit should have been dismissed, in the circumstances of the case, the two reliefs claimed in the appeal must be looked upon as independent and that therefore court-fee should have been paid on the relief as regards interest on the additional mortgage (*Ramji v. Khalil*, 37 P.L.R. 89: A.I.R. 1935 Lah. 605).

There is no difference in the principle applicable, whatever the nature of the final decree may be, and it is immaterial on what ground the final decree is challenged. If an appellant wishes to appeal on the sole ground, that extension of time ought to have been granted, his proper course is to appeal against the order refusing time and not against the decree. He can prefer a separate appeal and if an appeal is successfully preferred against an order refusing time, it will vacate the final decree, if one has been passed. If the appellant, instead of taking this course prefers an appeal against the decree, he must pay an *ad valorem* court-fee (*Raghubar Prasad v. Chhogmal*, 130 I.C. 98 F.B.). A memorandum of appeal from an order determining the amount of mesne profits payable to the plaintiff is to be stamped with *ad valorem* court-fee calculated on the amount or value by which it is complained that the decree of the trial Court is higher or lower, though it may be that an application for ascertainment of mesne profits made to the trial Court, being merely an application, has only to be stamped under Sch. II of the Court Fee Act (*Kedar Nath v. Moulcshwar Prasad*, 11 Pat. 532). A personal decree in a mortgage suit passed under Or. 34, R. 6, Civil Procedure Code, is a "decree" within the meaning of Sch. I, Art. 1, Court Fees Act, and *ad valorem* court-fees are payable on an appeal from such a decree. The fact that an appeal by the mortgagor against the preliminary decree for sale on which he has paid *ad valorem* court-fee is pending makes no difference (*Kartick Chandra v. Asharam*, 62 Cal. 568: 39 C.W.N. 315). On a memorandum of appeal by a plaintiff

Mesne
Profits.

Personal
decree.

Foreclosure
suit.

whose suit for foreclosure of a mortgage has been dismissed the court-fee payable is an *ad valorem* court-fee on the value of the subject-matter of the appeal (*Prag v. Bhagwan*, 47 All. 926). Where the appellant in an appeal from a redemption decree claims to redeem for a lesser amount than that decreed, he must pay court-fee on the difference between the sum decreed and the sum admitted in appeal as due (*Ramji Lal v. Shibba*, 75 I.C. 667). In *re Akhil Bandhu Guha* (38 C.W.N. 248), the plaintiff was the second mortgagee of certain properties. The mortgagees defendants held a prior mortgage of the same properties as also two subsequent mortgages in one of which there were some additional properties. They were made party defendants as subsequent mortgagees under Or. 34, R. 4, cl. (4) of the Civil Procedure Code. The plaintiff did not pray for redemption of the first mortgage. The lower Court passed a decree in form No. 9 of App. D of the Civil Procedure Code and refused to pass a decree in form No. 10 providing for the redemption of the first mortgage. It also refused the prayer of the mortgagees defendants for an order of sale of the additional property in one of their subsequent mortgages and for reservation of liberty to them to apply for a personal decree. The mortgagees defendants preferred an appeal against the decree as passed and prayed for the same reliefs. It was held that the memorandum of appeal ought to be stamped with a court-fee provided under Sch. II, Art. 17, cl. (vi) of the Court Fees Act.

When one suit is brought by the mortgagee on four mortgage bonds by which different properties were mortgaged by the same mortgagor, there are four *distinct subjects* within the meaning of sec. 17 and court-fees are payable separately on the sum claimed in respect of each of the bonds and not on the aggregate amount of the claim. The above rule will apply even if the suits are compulsorily consolidated into one suit by reason of sec. 67A of the Transfer of Property Act which provision cannot control sec. 17 of the

Distinct
Subjects.

Cal. High
Court
view.

Court Fees Act (*Radharanee v. Kshetra Mohan*, 40 C.W.N. 406). But this view of the Calcutta High Court was departed from by the Madras High Court in the case of *Secretary of State v. Ram P. Rm. M. Subramaniam Chettiar* (A.I.R. 1938 Mad. 278). In the Madras case it was held that, where a part of the subject-matter of the suit only is comprised in the appeal before the Appellate Court, deficit court-fee only in respect of that part of the suit can be levied and not in respect of the entire subject-matter of the suit. In that case Venkatasubba Rao and Abdur Rahman, JJ., observed: "On this point there are two reported decisions. In *Kerala Varma v. Chayayan-kutti*, 15 Mad. 181, the facts were: the suit related to three parcels of land but the defendants' appeal was in respect of only one of them. The suit was valued at Rs. 480 odd. The Appellate Court held that it ought to have been valued at about Rs. 1,100. The deficit court-fee not having been paid, an order was made, "original suit rejected". The learned Judges (Wilkinson and Shephard, JJ.) held that the District Judge's order was irregular, on the ground "he had no jurisdiction over the whole subject-matter of the suit, the appeal by defendant 4 related to one item only." It is a ruling of a Bench of our Court, which does not appear to have ever been questioned and there is no reason why we should now depart from it.

Madras
High Court
view.

The Court can permit an appellant to limit his appeal to the grounds mentioned on which court-fee had been paid by him (*Jai Dayal v. Narain Das*, 32 P.L.R. 854: 136 I.C. 270). Where in an appeal in a suit for partition the only proper relief is the claim for partition and the relief regarding declaration and injunction are unnecessarily put in, the Court may permit the appellant to give up the unnecessary reliefs and limit his claim to partition (In the matter of *Nanda Lal Mukerji*, 59 Cal. 315: 35 C.W.N. 942: A.I.R. 1932 Cal. 227). If the principal relief claimed is one for possession and the relief for declaration is merely

Partition.

ancillary to it, in that case it is enough to pay the court-fee on the relief for possession. On the other hand, if the principal relief is for declaration and the plaintiff's right to possession depends upon his being entitled to the declaration, then the relief for possession must be regarded as a consequential relief and the court-fee would be payable according to the amount at which the relief sought is valued in the plaint or the memorandum of appeal (*Shahar Bano Begum v. Raj Bahadur*, 149 I.C. 1138). *Radha Rane v. Kshetra Mohan*, 40 C.W.N. 406, is the second of the two cases referred to above. There the suit related to four mortgages and the lower Court accepted Rs. 2,775 to be the correct court-fee payable on the plaint. The defendants appealed in regard to a part of the suit claim, namely the amount claimed on the basis of the fourth mortgage bond alone. The Appellate Court held that the proper court-fee payable in the Court below was Rs. 6,000 odd. The question arose, could the Appellate Court make an order for the payment of this entire amount? The answer was given in the affirmative. It will be seen that the decision is at variance with what was held in 15 Mad. 181. But from the judgment, which is in this case also is very brief, it would appear that the argument that was put forward and negatived, was that indicated in position No. (iii) above. It follows therefrom that position No. (ii) did not fall to be considered in that case, that is, the position accepted in the Madras case; nor was that case referred to or cited."

An appeal from an order under Or. XXI, R. 50, Civil Procedure Code, is an appeal from an original decree and not a Civil Miscellaneous Appeal and should be stamped with *ad valorem* duty. (*Bhutnath v. Barindra*, 60 Cal. 530: 37 C.W.N. 227: 146 I.C. 123). Where an appeal is directed against the order of remand it should be filed as a miscellaneous appeal under Or. XLIII, R. 1 (u) of the Civil Procedure Code and a court-fee of Rs. 2 is payable on such appeal (*Bishunath v. Jagraj*, 8 Luck. 676: 144 I.C. 967). An order

directing an award passed in an arbitration out of Court to be filed is neither a decree nor an order having the force of a decree. An appeal therefrom need only be stamped with a court-fee of Rs. 2 under Art. 11, Sch. II of the Court Fees Act (*Ram Autar v. Ram Samujh*, 6 Luck. 703; A.I.R. 1932 Oudh 282). An appeal regarding compensation in a Land Acquisition case is not under Art. 11 of Sch. II of the Court Fees Act (In re *Ananda Lal Chakravarty*, 59 Cal. 528; 35 C.W.N. 1103; 137 I.C. 469). A memorandum of objections filed under Or. XLI. R. 26, Civil Procedure Code, is not a petition or application under Art. 1 (d) and no court-fee is chargeable thereon (*Mahomed Salimullah v. Khalilur Rahman*, 54 All. 465). An appeal from an order made on an application under sec. 144, Civil Procedure Code, is liable to *ad valorem* court-fees (*Birendra Nath v. Surendra Nath*, 42 C.W.N. 152; *Sital Prasad v. Jagdeo*, 4 Pat. 294; *Madan Mohan v. Nagendra*, 21 C.W.N. 544). Where an appeal is preferred to the High Court against an order of the Civil Court on a reference by the Collector under sec. 5 of the Bengal Alluvial Lands Act, a fixed court-fee of Rs. 20 is payable (*Basanta Kumar v. Prosonna Kumar*, 58 Cal. 710; 35 C.W.N. 181; A.I.R. 1932 Cal. 47).

Compensation in L.A. case.

Or. 41,
R. 26.

Reference by Collector.

In an appeal relating to future interest, the proper court-fee is *ad valorem* on the amount of interest claimed or decreed up till the date of the presentation of the appeal (*Sadiq Ali v. Niaz Ahmad*, 157 I.C. 633). A memorandum of appeal from an order determining the amount of mesne profits payable to the plaintiff is to be stamped with *ad valorem* court-fee calculated on the amount or value by which it is complained that the decree of the trial Court is higher or lower (*Kedar Nath v. Chandra Mouleshwar*, 11 Pat. 532).

Future interest.

Although the court-fee payable upon the memorandum of appeal in a suit for a mere declaration where no consequential relief is prayed, is governed by Art. 17 of the Second Schedule the court-fee payable on the cross-objection is not governed by the

Cross-Objection.

Costs.

same provision of the Court Fees Act. The court-fee on cross-objections should be paid *ad valorem* according to the value of the subject-matter in dispute under Art. 1, Sch. 1 of the Court Fees Act (*Abdul Subhan v. Musarat Ali*, 11 Luck. 79: 155 I.C. 293). Ordinarily, no court-fee is payable upon costs entered in the decree against which an appeal is presented, but where apart from, and independently of, any other relief which the appellant seeks, he seeks distinct relief on the ground that by the decree under appeal the costs of the parties have not been properly assessed or apportioned, the value of such distinct relief should be reckoned as part of the subject-matter in dispute for the purpose of Sch. I of the Court Fees Act (*Fateh Singh v. Manj Rai*, 155 I.C. 559). Where the appellant has prayed for the dismissal of the whole claim against him and has paid the proper court-fee on that relief, it is not necessary for him to pay separate *ad valorem* fees on the costs decreed against him, costs being incidental to that relief (*Beni Parshad v. Raja Ram*, 37 P.L.R. 50: 157 I.C. 96). In the case of *Kamal Kumari Debi v. Rungpur North Bengal Bank Ltd.*, (25 C.W.N. 934), it was held that a memorandum of cross-objection filed in the High Court relating to costs only does not fall either within Art. 11 or under Art. 1, Sch. I of the Court Fees Act, but may be treated as a petition and comes under cl. (d), Art. I, Sch. II of that Act and a court-fee of Rs. 2 is leviable thereon.

In that case Mr. Justice Chatterjea of the Calcutta High Court reviewed all the cases of the Privy Council and other High Courts [*Doorga Doss v. Romanath*, 8 M.I.A. 262; *Nilmadhab v. Bishumbhar*, 13 M.I.A. 85; *In re Makki*, 19 Mad. 350; *Rowlins v. Lachmi*, 3 P.L.J. 443; *Lakhan v. Ram Kishen*, 40 All. 93; *Debendra v. Sona Kuar*, (1901) A.W.N. 21.], and observed: "So far as I am aware, costs are never taken into account in valuing appeals to this Court at any rate when the appeal raises other grounds (than costs) as well."

In an appeal arising out of a suit to recover moneys due to the plaintiff under three deposits made on different dates with the defendants' firm in their character of trustees of the plaintiff's family, court-fee should be paid on the amount of each of the deposits separately and not merely on the aggregate amount. The deposits are "distinct subjects" within the meaning of sec. 17 of the Court Fees Act (*Ramaswami v. Ramaswami*, 61 M.L.J. 680: 134 I.C. 988). The court-fee payable on an application for review is the court-fee payable on the plaint or memorandum of appeal in which the judgment is sought to be reviewed and not merely the court-fee proportionate to the reliefs to which the application may be confined (*Ibrahim v. Ashan Hussain*, 142 I.C. 416). An application to restore an appeal dismissed for default of payment of the initial deposit can be entertained under Or. XLI, R. 19 read along with Sec. 151 of the Civil Procedure Code (*Hari Dassi v. Sajani*, 59 Cal. 1334: 36 C.W.N. 564). An application for restoration of an appeal dismissed for default in payment of paper-book costs is not an application for review either under Or. XLVII, R. 1, Civil Procedure Code, or under Art. 4 or 5 of Sch. I of the Court Fees Act. It is sufficient if it is stamped with a court-fee of Rs. 2 (*Nalini Sundari v. Narendra*, 36 C.W.N. 246: 141 I.C. 305).

Appeal dismissed for default.

Sec. 5 of the Court Fees Act does not give the High Court Judge deputed for the purpose of dealing with the questions of court-fees under sec. 5 to decide questions with regard to sufficiency of court-fees paid in subordinate Courts (*Maung Nyi v. Mandalay Municipal Committee*, 153 I.C. 1037). But the question of the sufficiency of the stamp on the memorandum of appeal should always be regarded as open until the appeal is finally heard and disposed of (*Sidheswari v. Ram Kumar*, 12 Pat. 694). No court-fee is required to be paid on an application for review of judgment passed in an appeal which was presented in *forma pauperis* (*Serajgunj Co-Operative Urban Bank v. Bindubasini*, 40 C.W.N. 1407).

Sec. 5, Court Fees Act.

The court-fee payable on a memorandum of appeal from an order refusing or granting letters of administration or probate of a will is Rs. 2 under Art. 11, Sch. II of the Court Fees Act (*Subhan Khan v. Mohamed Eusoof*, A.I.R. 1938 Rang. 141). In an appeal from an award of the Calcutta Improvement Tribunal, on a question of apportionment of compensation, the court-fee payable on the memorandum is governed by sec. 8 of the Court Fees Act and an *ad valorem* fee is payable (*Anandalal v. Karnani Industrial Bank*, 59 Cal. 528).

PART XIII.
LETTERS PATENT
ALLAHABAD.

Sec. 11. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall be a Court of Appeal from the Civil Courts of the North-Western Provinces, and from all other Courts subject to the superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

Appeal from
Courts in
the Pro-
vinces.

Sec. 14. And We do hereby ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature for the North-Western Provinces to each case coming before it in the exercise of its appellate jurisdiction such law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

By High
Court in
the exercise
of appellate
jurisdiction.

Sec. 30. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the said High Court of Judicature for the North-Western Provinces, made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by the Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court, under the provisions contained in the 10th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees or that such judgment, decree or order shall involve, directly or indirectly,

Power to
appeal.

some claim, demand or questions to, or respecting property amounting to or the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council subject always to such rules and orders as are now in force or may, from time to time, be made, respecting appeals to Ourselves in Council from the Courts of the said Provinces, except so far as the said existing rules and orders, respectively, are thereby varied: and subject also to such further rules and orders, as We may, with the advice of Our Privy Council hereafter make in that behalf.

Appeal from
interlocutory
judgment.

Sec. 31. And We do further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order or sentence of the High Court, in any such proceedings as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors in Our or Their Privy Council, subject to the same rules, regulations and limitations, as are herein expressed respecting appeals from final judgments, decrees, orders and sentences.

LETTERS PATENT

CALCUTTA.

Appeal from
the Courts
of original
jurisdiction
to the High
Court in its

Sec. 15. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal, from the judgment (not being a judgment passed in the exercise of appellate

jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one *Judge* of the said High Court or one judge of any Division Court, pursuant to section 108 of the Government of India Act, made on or after the 1st day of February 1929, in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal, but that the right of appeal from other judgment of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided.

Sec. 16. And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall be a Court of Appeal from the Civil Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

Appeal from
Courts in the
Province.

Sec. 21. And We do further ordain that, with respect to the law of equity and rule of good conscience to be applied by the said High Court of Judicature at Fort William in Bengal, to each case coming before it in the exercise of its appellate jurisdiction,

By High
Court in the
exercise of
appellate
jurisdiction.

such law or equity and rule of good conscience shall be the law or equity and rule of good conscience, which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

**Power to
appeal.**

Sec. 39. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the said High Court of Judicature at Fort William in Bengal, made on appeal and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court, under the provisions contained in the 15th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees: or that such judgment, decree or order shall involve, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council; subject always to such rules and orders as are now in force, or may, from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency, except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

**Appeals from
interlocutory
judgment.**

Sec. 40. And We do further ordain that the said High Court of Judicature at Fort William in Bengal, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said

High Court upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order or sentence of the High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees, orders and sentences.

LETTERS PATENT

LAHORE.

Sec. 10. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal

Appeal to
the High
Court from
Judges of
the Court,

from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided.

Appeal from
other Civil
Courts in
the Pro-
vinces of
the Punjab
and Delhi.

Sec. 11. And We do further ordain that the High Court of Judicature at Lahore shall be a Court of Appeal from the Civil Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India.

Power to
appeal in
civil cases.

Sec. 29. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of Criminal Jurisdiction, from any final judgment, decree or order of the High Court of Judicature at Lahore made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court, under the provisions contained in the 10th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value or not less than 10,000 rupees, or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made,

respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi, except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Sec. 30. And We do further ordain that it shall be lawful for the High Court of Judicature at Lahore at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court, in any such proceedings as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders.

Appeal from
interlocutory
judgments.

LETTERS PATENT

NAGPUR.

Sec. 10. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Nagpur from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the powers of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and

that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, or Our heirs and successors, in Our or Their Privy Council, as hereinafter provided.

Appeal from
other Civil
Courts in
the Central
Provinces.

11. And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of Appeal from the High Courts of the Central Provinces and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases, as were, immediately before the date of the publication of these presents, subject to appeal to the Court of the Judicial Commissioner of the Central Provinces by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Nagpur by any law made by competent legislative authority for India.

By the High
Court in
the exercise
of appellate
jurisdiction.

14. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Nagpur to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Power to
appeal in
civil cases.

29. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment,

decree or order of the High Court of Judicature at Nagpur made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of said Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the tenth clause of these presents:

Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise aforesaid, when the said High Court declared that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Central Provinces except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

30. And We do further ordain that it shall be lawful for the High Court of Judicature at Nagpur at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders.

Appeal from
interlocutory
judgments.

LETTERS PATENT

PATNA.

Appeal from
Judges of the
Court to the
High Court.

10. And We do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court, where the Judge who passed the judgment declares thatt he case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors, in Our or Their Privy Council, as hereinafter provided.

Appeal from
other Civil
Courts in the
Province of
Bihar and
Orissa.

11. And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Civil Courts of the Province of Bihar and Orissa and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject

to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

31. And We do further ordian that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the High Court of Judicature at Patna made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the 10th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa, except so far as the said existing rules and orders respectively are hereby varied: and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Power to
appeal in
civil cases.

32. And We do further ordian that it shall be lawful for the High Court of Judicature at Patna, at its discretion, on the motion, or, if the said High Court be not sitting then for any Judge of the said High Court, upon the petition, of any party who considers

Appeal from
interlocutory
judgments.

himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations are are herein expressed respecting appeals from final judgments, decrees and orders.

LETTERS PATENT

RANGOON.

Appeal to
the High
Court from
Judges of
the Court.

13. And We do further ordian that an appeal shall lie to the High Court of Judicature at Rangoon, from the judgment (not being a judgment made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of s. 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one judge of any Division Court, pursuant to, sec. 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to sec. 108 of the Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment

declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors, in Our or Their Privy Council as hereinafter provided.

14. And We do further ordain that the High Court of Judicature at Rangoon shall be a Court of Appeal from the Civil Courts of the Province of Burma for which, immediately before the publication of these presents, the Chief Court of lower Burma or the Court of the Judicial Commissioner of Upper Burma was a Court of Appeal, and from all other Civil Courts, whether within or without the Province of Burma, for which the said High Court is declared to be a Court of Appeal by any law made by the Local Legislature or by competent legislative authority for India, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of Lower Burma or to the Court of the Judicial Commissioner of Upper Burma by virtue of any law then in force, or as may after that date be declared subject to appeal to the said High Court by any law made by the Local Legislature or by competent legislative authority for India.

Appeal from
other Civil
Courts.

20. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Rangoon, to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and the rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Law and
equity to be
administered
by the High
Court in the
exercise of
appellate
jurisdiction.

37. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction from any final judgment, decree or order of the High Court of Judicature at

Power to
appeal in
civil cases.

Rangoon made on appeal and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provisions contained in the 13th clause of these presents:

Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our heirs and successors, in Our or Their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Burma, except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

Appeal from
interlocutory
judgments.

38. And We do further ordian that it shall be lawful for the High Court of Judicature at Rangoon at its discretion, on the motion, or, if the said High Court be not sitting then, for any Judge of the said High Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decree and orders.

PART XIV.

LETTERS PATENT

MEANING OF "JUDGMENT."

As regards the meaning of the word "judgment" as used in the clause of the Letters Patent, Courts in this country have taken different views. So far as the Calcutta High Court is concerned the leading case on the point is that of *The Justices of the Peace for Calcutta v. The Oriental Gas Co.*¹ in which Couch, C.J., observed: "We think 'judgment' in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be final, or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined." In more decisions than one of the Calcutta High Court this definition of "judgment" given by Couch, C.J., has been described as classical; and yet in a long series of decisions the Calcutta High Court has repeatedly expressed the view that the definition is not absolutely exhaustive.² Treating this definition as not of an inflexible character and yet not expressly purporting to extend it, the Calcutta High Court has in numerous cases emphasized the necessity of scrutinizing the nature of the decision in each particular case in order to find out whether the decision amounts to a "judgment" within the meaning of the clause.

Justices of
the Peace
for Calcutta
v.
Oriental
Gas Co.

¹ 17 W.R. 364; 8 B.L.R. 433.

² *Brij Coomaree v. Ramrick*, 5 C.W.N. 781; *Gour Mohan v. Nayan Manjuri*, 26 C.W.N. 242; *Mathura Sundari v. Haran Chandra*, 43 Cal. 857; *Budhu Lal v. Chattu Gope*, 44 Cal. 804; *Ramendra Nath v. Brojendra Nath*, 45 Cal. 111.

Tuljaram
v.
Alagappa.

In Madras, White, C.J., in the Full Bench decision in *Tuljaram Rao v. Alagappa*,³ observed: "The test seems to me to be not what is the form of the adjudication, but what is its effect in the suit or proceeding in which it is made." The learned Chief Justice laid down three tests for determining whether an order is a "judgment" within the meaning of the corresponding clause of the Madras Letters Patent. They are the following:—

- (1) If its effect is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned; or
- (2) If the non-compliance therewith will have the effect of putting an end to such suit or proceeding; or
- (3) If it is passed in an independent proceeding which is ancillary to the suit (not instituted as a step towards judgment, but with a view to rendering the judgment effective when obtained),—*e.g.*, an order on an application for temporary injunction or for the appointment of a receiver.

Lea Badin
v.
Upendra
Mohan.

In the case of *Lea Badin v. Upendra Mohan Roy Chowdhury*,⁴ Mukerji, J., characterized the definition of Couch, C. J. as one antequated and preferred the tests laid down by White, C. J., to the definition of Couch, C.J. In that case an order made by a Judge on the Original Side, discharging an *interim* receiver appointed *ex parte* on the plaintiff's application pending his suit, was held to be appealable, such an order being regarded as a "judgment" within the meaning of the clause (15) of the Letters Patent.

An order by a single Judge of the High Court transferring a suit from one subordinate Court to another is a discretionary order and not a *judgment*,

³ 35 Mad. 1.

⁴ 39 C.W.N. 155.

and is therefore not appealable.⁵ An order passed by a single Judge in a case under section 115 of the Civil Procedure Code is not appealable.⁶ The order of a single Judge dismissing an application under section 5 of the Limitation Act, and refusing to extend time is not a *judgment*, and no appeal lies from that order.⁷

An order of the Judge sitting in Chambers refusing leave to sue in *forma pauperis* is appealable as a *judgment*.⁸ An order fixing the date of sale or extending the time for sale of certain partnership property is in the nature of an order regulating the procedure under the order for sale and is not a *judgment*, and no appeal lies from it.⁹ An order granting leave to defend on condition that the defendant should deposit in Court a sum of money by a date mentioned therein is a *judgment* and an appeal lies from the order.¹⁰ An order dismissing a petition under section 39 of the Lunacy Act to adjudge a person to be a lunatic is not a *judgment* and no appeal lies from it.¹¹

In order to determine whether a certain order is a "judgment" or not, the test is finality in relation to the Court passing the order. An order passed on a preliminary issue of jurisdiction allowing the suit to proceed is not a *judgment* and is not appealable.¹² An order directing the receiver of an estate in insolvency to give security for the costs of a suit filed by the insolvent and continued by the receiver is not a *judgment* and is not appealable.¹³ An order rejecting a scheme for the re-organization of the capital of a

⁵ Khuni Lal v. Narain Das, 1935 A.L.J. 968: A.I.R. 1935 All. 750.

⁶ Gulzari Lal v. Sheo Charan, 1935 A.L.J. 940: A.I.R. 1935 All. 889.

⁷ Shahzadi Begum v. Alakh Nath, 57 All. 983.

⁸ Sadashiv v. Soonderdas, 32 Bom.L.R. 1647: 130 I.C. 24.

⁹ Ibrahimbai v. Yoosuf, 56 Bom. 237.

¹⁰ Ramanlal v. Chunilal, 56 Bom. 268.

¹¹ Aishabai v. Ismail, 57 Bom. 371.

¹² Raman Chettyar v. Bank of Chetnad, 11 Rang. 19.

¹³ Jorden v. Maung Ba Chit, 9 Rang. 478.

company is appealable both under section 202 of the Companies Act and also under the Letters Patent.¹⁴ An order granting leave to the defendant to defend the suit under the provisions of Or. XXXVII, Civil Procedure Code, on condition that he pays into Court within a certain time a certain sum of money and furnish security for the balance of the claim to the satisfaction of the Court and in the event of his failing to comply with the condition, leave to defend will be withdrawn and the plaintiff will be entitled to a decree for the full amount claimed does not amount to a "judgment" within the meaning of the clause under the Letters Patent and is therefore not appealable.¹⁵

Collector
of Dacca
v.
Golam Ajam.

In the case of *The Collector of Dacca v. Golam Ajam Choudhury*,¹⁶ it was held in the Letters Patent appeal that a judgment of the High Court in a case under the Land Acquisition Act, as amended by Act XIX of 1921, is a "judgment" within the meaning of clause 15 of the Letters Patent. In that case it was urged on behalf of the respondents that no appeal was permissible under the Letters Patent, inasmuch as the decision of the High Court in a land acquisition case was not a *judgment* within the meaning of sec. 15 of the Letters Patent so as to enable a party to file a further appeal to the High Court under that provision of the law. In support of this position, reliance was placed on the decision of the Madras High Court given in the year 1918, in the case of *Malavikraman Tirumalpad v. The Collector of the Nilgiris*,¹⁷ based principally on the judgment of their Lordships of the Judicial Committee of the Privy Council, delivered in the year 1912, in the case of *Rangoon Botatoung Company v. The Collector of Rangoon*¹⁸ and on the observations of Lord Macnaghten in a case decided

Malavikra-
man
v.
Collector of
Nilgiris.

Rangoon
Botataung
Co.
v.
Collector of
Rangoon
(P.C.).

¹⁴ Dawson v. Hormasji, 10 Rang. 438.

¹⁵ A. S. Chettyar Firm v. Veerappa Chettyar, 13 Rang. 239.

¹⁶ 40 C.W.N. 1143.

¹⁷ 41 Mad. 943.

¹⁸ 39 I.A. 197: 16 C.W.N. 961.

by the Judicial Committee in the year 1913—the case of *The Special Officer, Salsette Building Sites v. Dasabhai Bezani Motiwala*.¹⁹ Their Lordships (Guha, J., Bartley, J., and Mitter, J.) observed in the judgment of the Letters Patent appeal: “The question for consideration now is, whether a judgment in a land acquisition case is a *judgment* as mentioned in sec. 15 of the Letters Patent, and the question, in our judgment, must be answered in the words used by Couch, C.J., in *The Justices of the Peace for Calcutta v. The Oriental Gas Co.*:²⁰ “the judgment in cl. 15 means a decision which affects the merits of the question between the parties, by determining some right or liability.” The definition of “judgment” in the case of *The Justices of the Peace for Calcutta v. The Oriental Gas Co.*²⁰ must be taken to have received the approval of their Lordships of the Judicial Committee of the Privy Council by their decision in the case of *Hurish Chunder v. Kali Sundari*,²¹ which affirmed the decision of this Court in the case of *Kali Sundari v. Hurish Chunder*²² in which the definition of the word “judgment” contained in the case of *The Justices of the Peace for Calcutta v. The Oriental Gas Co.*²⁰ was adopted. A judgment in a Land Acquisition case is now under the Code of Civil Procedure, and appealable as such, and we do not see any reason to give a limited meaning of the word as used in the Letters Patent.

The view taken by the Lahore High Court in *Har Dial Shah v. The Secretary of State for India*²³ was that the Land Acquisition Amendment Act (XIX of 1921) did not in any way affect the right of appeal from the judgment of one Judge to a Division Bench under the Letters Patent; the scope of the amendment was to extend the right of appeal and not to curtail any existing right. As it was pointed out by the

The Special
Officer,
Salsette
Building
Sites
v.
Dasabhai
Bezani
(P.C.).

Har Dial
v.
Secy. of
State.

¹⁹ 17 C.W.N. 421.

²⁰ 8 B.L.R. 433.

²¹ 10 I.A. 4: 9 Cal. 482.

²² 6 Cal. 594.

²³ 3 Lah. 420.

learned Judges in the above case, sec. 111 of the Code of Civil Procedure prohibits an appeal to His Majesty in Council from the judgment of a single Judge of a High Court established by the Letters Patent, and the reason of the prohibition was that an appeal from such a judgment is provided for in the Letters Patent; that an aggrieved party should not be permitted to appeal to His Majesty in Council, but that he should in the first instance appeal under the Letters Patent, to the other Judges of the High Court. As indicated above, the word "judgment" as used in sec. 15 of the Letters Patent, must in our judgment be held to include all judgments affecting the merits of the questions between parties before the Court by determining some right or liability; and by the express provision contained in the Amending Act of 1921, a judgment includes a judgment in a Land Acquisition case."

Sevak
Jeranchod
v.
Dakore
Temple
Committee
(P.C.).

Sir John Edge in the course of delivering the judgment of the Judicial Committee of the Privy Council in the case of *Sevak Jeranchod Bhogilal v. The Dakore Temple Committee*²⁴ said that "the term 'judgment' in the Letters Patent of the High Court means, in civil cases, a decree and not a judgment in the ordinary sense." In the case of *Ex parte: Country Council of Kent and Council of Dover, In re: Local Government Act, 1888, Ex parte: County Council of Kent and Council of Sandwich, In re The Local Government Act, 1888*,²⁵ it was held by the Court of Appeal that the jurisdiction of the High Court of Justice upon questions submitted to it, under sec. 29 of the Local Government Act, 1888, was consultative only and not judicial and accordingly no appeal lay from its decision to the Court of Appeal. In the case of *Kumar Gangadhar Bagla v. Kanti Chunder Mukherjee*,²⁶ it has been held that the pronouncement of a Judge, on a special report submitted by an officer

Gangadhar
v.
Kanti
Chunder.

²⁴ 30 C.W.N. 459.

²⁵ (1891) 1 Q.B. 725.

²⁶ 40 C.W.N. 1264.

taking a reference under Chap. 26, r. 50, of the Original Side Rules, is not a *judgment* within the meaning of cl. 15 of the Letters Patent and therefore not appealable.

A second appeal was dismissed by a Judge of the High Court sitting singly and leave to appeal under cl. 15 of the Letters Patent was asked for but was refused. Thereafter the appellant moved a Division Bench to grant leave to appeal. It was also argued that the petition for leave might be treated as an appeal against the order refusing leave. It was held that neither sec. 96 nor sec. 100 of the Civil Procedure Code would give a right of an appeal from the decision in the second appeal. Even if an order refusing to grant leave could be regarded as a judgment under the first part of cl. 15, an order to a different effect by a Division Bench in appeal therefrom would not suffice to give him a right of appeal against the second appellate decree, because under the second part of cl. 15, the second appellate decree will be appealable only on a certificate granted by the Judge who heard the second appeal.²⁷ An order for the public examination of a person under sec. 196 of the Companies Act is not a *judgment* within the meaning of cl. 13 of the Letters Patent of the Rangoon High Court and therefore is not appealable.²⁸

²⁷ In re Govinda Rao, 59 Mad. 293.

²⁸ K. B. Roy Chaudhury v. Burma Loan Bank, Ltd., 14 Rang. 15.

APPELLATE SIDE RULES
OF
HIGH COURTS.

CALCUTTA HIGH COURT

APPELLATE SIDE RULES.

PROCEDURE AND PRACTICE

CHAPTER IV.

GENERAL RULES FOR APPLICATIONS AND AFFIDAVITS.

Applications.

1. Applications to the High Court shall be made by petitions written in the English language.

SCHEDULE.

Applications relating to the following matters should bear a court-fee stamp of Rs. 2.

Subject.	Details.	Under what rule.	Whether affidavit necessary.
Court-fees	1. Refund of court-fees paid in excess.	Section 13, Court-fees Act, Rule 2 (4), Chapter II, of these Rules.	Affidavit not necessary.
	2. Time to put in requisite court-fee and refile of Memo. of Appeal after period of limitation.	Clauses (3), (4) and (5) of rule 18, Chapter V of these Rules.	Affidavit necessary.
	3. Substitution of parties (including minors).	Order XXII, rules 3 (1) and 4 (1), Civil Procedure Code, and rule 2 (5), Chapter II of these Rules.	Ditto.

Subject.	Details.	Under what rule.	Whether affidavit necessary.
	4. Appointment of guardians <i>ad litem</i> .	Order XXXII, rule 3 (2), Civil Procedure Code, and rule 2 (6), Chapter II of these Rules.	Ditto.
	5. Amendment of Memo. of Appeal on a minor attaining majority.	Rules 26 and 28, Chapter V of these Rules.	Affidavit necessary except in case of application by appellant when based on affidavit already filed by respondent.
Notice	6. Cancellation of Deputy Registrar's appointment as guardian <i>ad litem</i> .	Order XXXII, rule 11, Civil Procedure Code, and rule 2 (6), Chapter II, read with rule 29, Chapter V of these Rules.	Affidavit necessary.
	7. Substituted service.	Order V, rule 20, Civil Procedure Code, and rule 2 (4), Chapter II of these Rules.	Ditto.
Notice forms and fees.	8. Enlargement of time for the filing of notice forms and fees.	Rule 12, Chapter IV and rule 36 (b), Chapter V of these Rules.	Affidavit may be directed to be filed.
Paper-book	9. Revision of lists by appellants or respondents.	Rules 8 and 21, Chapter IX and rule 2 (17), Chapter II of these Rules.	Affidavit not necessary; if agreed to by the opposite party.
	9. (a) Enlargement of time for the deposit of Initial cost.	Rule 34 read with Rule 36 (6), Chapter V of these Rules.	Affidavit necessary when directed.
	10. Enlargement of time for filing lists.	Rules 8 and 16, Chapter IV of these Rules.	Affidavit not necessary.

Subject.	Details.	Under what rule.	Whether affidavit necessary.
11.	Respondent requiring appellant to include any papers in the appellant's list.	Rule 23, Chapter IX and rule 2 (17), Chapter II of these Rules.	Ditto.
12.	Authorisation of another Advocate by the Advocate by the Government Pleader to prepare the paper-book on his behalf.	Rules 8 and 34, Chapter IX and rule 2 (17), Chapter II of these Rules.	Ditto.
13.	Assistance of another Advocate in the preparation of the paper-book when required by an Advocate who has filed a declaration.	Rule 37 (e), Chapter IX and rule 2 (17), Chapter II of these Rules.	Ditto.
14.	Exemption from the deposit of costs estimated by office within the prescribed time.	Rules 8 and 22, Chapter IX and rule 2 (17), Chapter II of these Rules.	Affidavit necessary if directed.
15.	Exemption from deposit of paper-book cost by respondent when filing vakalatnama.	Rule 34 (2)(a), Chapter V and rules 8 and 59, Chapter IX of these Rules.	Affidavit not necessary.
16.	Editing of paper-book out of Court in appeal valued above Rs. 10,000.	Rule 8, Chapter IX and rule 2 (17), Chapter II of these Rules.	Ditto.
17.	Extension of time to file application with notice to appellant for inclusion of additional papers in the paper-book at appellant's cost.	Rule 23 of Chapter IX of these Rules.	Affidavit necessary.
18.	Relaxation of rule 53 (a), Chapter IX of these Rules.	Rule 8, Chapter IX of these Rules.	Ditto.

Subject.	Details.	Under what rule.	Whether affidavit necessary.
Privy Council	19. Relaxation of rule 55, Chapter IX of these Rules.	Rule 55, Chapter IX of these Rules.	Ditto.
	20. Transmission of orders of Privy Council to lower courts for execution and for preparation of certificates of costs.	Rule 4, Chapter VI of these rules read with Article I of Schedule II of the Court-Fees Act.	Affidavit not necessary.
	21. Acceptance of securities other than cash or Government securities.	Rule 33, Chapter VI of these Rules.	Affidavit necessary.
	22. Refund of securities	Article 1 of Schedule II of the Court Fees Act.	Affidavit not necessary.
	23. Conversion of securities from one form into another.	Note to Rule 33, Chapter VI of these Rules.	Ditto.
	24. Exclusion from or inclusion in transcript record to Privy Council of papers.	Rule 23 (3) (b), Chapter VI of these Rules.	Ditto.
Records	25. Return of documents during pendency of appeal.	Rule 2 (10), Chapter II, of these Rules, Order XIII, rule 9, Civil Procedure Code.	Affidavit not necessary.
	26. Requisition for records from lower courts relating to cases other than the appeals pending in this Court.	Rules 19 and 20, Chapter IV of these Rules.	Ditto.

Subject.	Details.	Under what rule.	Whether affidavit necessary.
General	27. Requisition for exhibited documents which do not come up in second appeals with the lower court records.	Rules 19 and 20, Chapter IV of these Rules.	Ditto.
	28. Return of exhibits to affidavit or verified petition.	Rule 33 (i), Chapter IV of these Rules.	Ditto (if document to be returned is original document.)
	29. Exemption from production of more than one copy of the judgment in analogous appeals and from payment of a separate set of estimating fee for applications for leave to appeal to His Majesty in Council filed by the same party against the same judgment of this Court.	Order XLI, rule 1 (1), Civil Procedure Code, Rule 3, Chapter V, rule 2 (18), Chapter II and Rule 11, Chapter VI, of these Rules.	Affidavit not necessary.
	30. Cancellation of Vakalatnama .	Rule 71, Chapter V of these Rules.	Affidavit necessary unless Advocate who accepted the Vakalatnama signifies his willingness to retire from case.
	31. Amendment of Memorandum of Appeal consequent on the death of a party including a party whose heirs are already on record.	Order XXII, rules 3 and 4, Civil Procedure Code, and rule 25, Chapter V, read with rule 2 (7), Chapter II, of these Rules.	Affidavit necessary.

2. In every application presented to the High Court there should be stated, immediately after the cause title, the section and statute under which the application is made, the date of the order complained of, and whether the subject matter of the suit, out of which the application arises, does or does not exceed Rs. 1,000 in value.

"2A. Every application for revision shall be produced before the Commissioner of Affidavits at the time an affidavit in support of it is made, and that officer shall satisfy himself that the application is sufficiently stamped and shall certify accordingly."

(No. 19,, Notification No. 11991G., dated the 14th September, 1937.)

3. Every application to the High Court relating to an appeal pending before the Court shall be filed with the Bench Clerk concerned at least 24 hours before the sitting of the Court before which it is proposed to move the application, or of the Registrar if the application is entertainable by him. Such applications shall be listed for hearing on the next motion day. No such application which has not been duly listed will be entertained by the Court or the Registrar, unless in the special circumstances of the case the Court or the Registrar otherwise directs.

4. Every application to the High Court, if founded on any statement of fact, shall set out the material facts, matters and circumstances on which the applicant relies.

5. When an application is made to the Court or to the Registrar in any matter in which any previous application was made to the Court or to the Registrar to the same effect, or with the same object, or with a similar object, the fact of such application having been made and the order passed thereon shall be clearly stated in the application.

6. Every such application shall be neatly typed on stout paper of foolscap size with a margin of two

inches and shall contain about 20 lines in each full page. The application shall be divided into paragraphs and numbered consecutively and only one side of the paper shall be used.

7. The facts stated in such application shall be verified by the solemn affirmation of the applicant or by an affidavit to be annexed to the application.

8. Every application shall be signed and dated either by the applicant or declarant or his Advocate.

9. It will not be necessary to set out in the application or in the affidavit any document which is part of a record present in the High Court; nor will it be necessary to produce any affidavit of any facts found by the High Court or any of the Lower Courts in the course of the suit or proceeding out of which the appeal arises: provided that such finding has not been reversed on appeal; but the application shall state shortly all facts upon which it is intended to rely, and shall give the number, letter, title or other description of all documents on the record present in the High Court, to which it is intended to refer.

10. In the case of an application relating to a matter which is or has been before the High Court, the High Court file, together with the application, shall be placed before the Court or the Registrar at the time of the hearing of the application. When the applicant desires that any documents in a record present in the High Court other than those contained in the High Court file, shall be produced at the hearing in order that they may be referred to by the Court, he shall at the time of filing the application give notice to produce them to the Bench Clerk concerned. Unless by a special order of the Court or the Registrar, documents will not be produced from the record-room or the office during the sitting of the Court.

11. In all cases in which service of notice on the opposite party is necessary, if such notice has not been duly served, the hearing of the application (except

in cases of urgency) shall be postponed unless the parties entitled to notice are present and willing to proceed at once. In all cases the parties opposing the application shall be at liberty to apply for a postponement in order to answer the affidavits or for any other good and special cause.

12. The fee for the issue of the notice on the opposite party shall be paid into Court within seven days from the date of granting the application:

Provided that no order shall be passed to receive such fee when tendered out of time, except upon an application with a court fee of Rs. 2 setting forth the reasons for condoning delay.

13. Any party opposing the grant of an application showing cause against a Rule, who may desire to bring before the Court any facts not contained in, or admitted by, the application or affidavit of the opposite party, shall do so by an affidavit containing, in the form of a narrative, the material facts on which he relies.

14. No affidavits in answer shall ordinarily be read which have not been filed with the proper officer of the Court 24 hours before the sitting of the Court or the Registrar on the date fixed for the hearing of the application.

15. No affidavit shall ordinarily be read at the hearing of any appeal, application or other proceeding unless a copy thereof has been served upon the other party or his Advocate 24 hours before such hearing:

Provided that this rule shall not apply to urgent motions or applications or to motions or applications made *ex parte*.

16. Every application for stay of execution under Order XLI, rule 5, Civil Procedure Code, shall specifically state that it is made under that rule, and it shall be accompanied by an affidavit stating specifically the facts upon which the application is based; the date of the decree or order the stay of execution of

which is desired; the date of the order, if any, for execution or sale; the date, if any, fixed for the sale: and the facts necessary to enable the Court to be satisfied of the matters mentioned in Order XLI, rule 5, sub-clause (3) of the Code.

17. Every application for security under Order XLI, rule 6 or 10, shall state specifically under which rule it is made, and shall be accompanied by an affidavit stating specifically the facts upon which the application is based.

18. Every application for the re-admission or restoration of an appeal or application, dismissed for default of appearance, shall be accompanied by an affidavit stating the circumstances in which such default was made, and whether or not the party whose appeal or application was dismissed had, previously to such dismissal, engaged an Advocate to conduct the appeal or application.

19. Every application for an order to a subordinate Court to forward any record, document or paper shall state—

- (a) the Court in which such record, document or paper is;
- (b) the record in which such document or paper is;
- (c) the date of the document or paper;
- (d) such other information as may be necessary for the purpose of identifying such record, document or paper.

20. Every such application shall bear the Court-fee stamps leviable under Article 1 (d)(ii) of Schedule II of the Court-fees Act, 1870, as amended by Act IV of 1922 (Bengal Council), and shall be accompanied by a certificate signed by an Advocate that in his opinion such record, document or paper is requisite and material for supporting or opposing the appeal or other proceeding.

Provided that an application for calling for a record or what was already made a part of a record of,

the case which has given rise to the proceedings in this Court in connection with which the application is made need not bear a stamp.

(No. 20, Notification No. 11991G., dated the 14th September, 1937.)

AFFIDAVITS.

21. Every affidavit to be used in a Court of Justice shall be entitled "In the Court of at _____," naming such Court.

22. If there be a cause in Court, the affidavit in support of, or in opposition to, an application respecting it shall also be entitled in the cause.

23. If there be no cause in Court, the affidavit shall be entitled "In the matter of the petition of _____."

24. Every affidavit containing any statement of fact shall be divided into paragraphs, and every paragraph shall be numbered consecutively and, as nearly as may be, shall be confined to a distinct portion of the subject.

25. Every person, other than a plaintiff or defendant in a suit in which the application is made, making any affidavit, shall be described in such a manner as will serve to identify him clearly, that is to say, by the statement of his full name, the name of his father, his profession or trade, and the place of his residence.

26. When the declarant in any affidavit speaks to any fact within his own knowledge, he shall do so directly and positively using the words "I affirm (or 'make oath') and say."

27. When the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant shall use the expression "I am informed," and if such be the case, should add "and verily believe it to be true," and he must also state the source from which he received disclosed in documents or copies of documents pro-

cured from any Court of Justice or other source, the deponent shall state what is the source from which they were procured, and his information or belief as to the truth of the facts disclosed in such documents. Copies of documents (other than those on the record of the case) to which it is intended that reference should be made at the time of hearing shall be annexed to the affidavit and shall be marked as an exhibit and shall bear the certificate of the Commissioner before whom the affidavit is made.

28. Every person making an affidavit, if not personally known to the Commissioner, shall be identified to the Commissioner by some person known to him, and the Commissioner shall specify at the foot of the application or of the affidavit (as the case may be) the name and description of him by whom the identification is made, as well as the time and place of the identification, and of the making of the affidavit. Every *pardanashin* woman verifying an application or making an affidavit in the manner specified in the preceding rules and every such application or affidavit shall be accompanied by the affidavit of identification of such woman made at the time by the person who identified her.

29. If any person making an affidavit shall be ignorant of the language in which it is written, or shall appear to the Commissioner to be illiterate, or not fully to understand the contents of the affidavit, the Commissioner shall cause the affidavit to be read and explained to him in a language which both he and the Commissioner understand, either doing so himself, or causing another person to do so in his presence. When any affidavit is read and explained as herein provided, the Commissioner shall certify in writing at the foot of the affidavit that it has been so read or explained, and that the declarant seemed perfectly to understand the same at the time of making the affidavit.

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CHAPTER V.

GENERAL RULES OF PROCEDURE.

1. The provisions of Chapter IV shall apply, as far as may be, to every memorandum of appeal, to every memorandum of objection under Order XLI, rule 22 or 26, Civil Procedure Code, and to every application for revision.

2. Every memorandum of appeal *and of cross-objection* shall be drawn up in the manner prescribed by Order XLI, rule 1, Civil Procedure Code. Every such memorandum of appeal and of *cross-objection and* every application for revision shall, immediately below the title, have endorsed on it "First Appeal," "Second Appeal," "Appeal from Order," or "Revision," as the case may be, and shall state—

- (a) the name and full postal address of each appellant or applicant;
- (b) the name * * * of each person whom it is proposed to make a respondent;
- (c) The Court in which, and (i) in the case of first appeals the name of the Judge by whom the decree or order referred to was made, (ii) in the case of second appeals the name of the presiding officer of the Lower Appellate Court as well as that of the Court of first instance;
- (d) The date when and the number and year of the suit or proceeding in which such decree or order was made;
- (e) the ground or grounds numbered *seriatim* of objection to the decree or judgment appealed from, without any argument or narrative;
- (f) the value of the appeal: *Provided that in every case in which an appeal or cross-objection is preferred to this Court and the valuation, for the pur-*

poses of Court-Fees, or the Court-Fee paid, varies from that of the trial Court; in the case of First Appeals, or from that of either the trial Court or the lower Appellate Court, in the case of Second Appeals, the Advocate shall, at the time of filing the appeal, add below the valuation in the Memorandum of Appeal a short explanatory note setting forth the reasons for the variation, giving, if necessary, references to the certified copies of the judgment and decree, and mentioning the relevant pages thereof, which are filed with the Memorandum of Appeal. Any omission to file this note shall be forthwith reported to the Registrar, who may direct that the note be filed within a specified period according to the circumstances of each case or direct that the matter be laid before a Division Bench.

(No. 1: Notification No. 15450G., dated the 11th July, 1936.) ..

(g) in the case of an appeal, whether the suit in which the appeal is made has already been before the Court on appeal.

3. When the same appellant wishes to prefer more than one appeal from a judgment governing more than one case, the Registrar may dispense with the production of more than one copy of the judgment.

In such a case only one application is necessary. Vide No. 22, Notification No. 11991G., dated the 14th September, 1937.

4. In the case of—

(1) appeals from orders of the Lower Appellate Courts remanding cases for re-trial; and

(2) appeals from the orders of the Lower Courts made on remand by the High

Court,

there shall be added at the foot of every memorandum of appeal a note to the following effect:—

NOTE.—This appeal is from an order of the Lower Appellate Court, dated _____, remanding the case for re-trial under section _____ Civil Procedure Code.

This appeal is from an order of the Lower Appellate Court (or the Court of First Instance, as the case may be) made on remand by the High Court, in Appeal No. _____ of _____, dated the _____, in which this appellant was appellant or respondent (as the case may be).

5. In the event of any omission on the part of the Advocate to append to the memorandum of appeal a note in the terms required by rule 4, it shall be the duty of the Registrar to bring such omission to the notice of the Division Court before which the appeal is pending, and it will be for the Division Court to decide whether, as a penalty for such omission on the part of the Advocate, any costs to which his client may otherwise become entitled should not be withheld.

6. A memorandum of appeal to the High Court against the decree or order passed in appeal by any Court subordinate to it shall be accompanied by copies of the judgment and decree or order of both the Lower Courts, and, if filed by an Advocate of the High Court shall bear a certificate under his hand at the foot of the petition in the following form:—

I, A B Advocate for the abovenamed _____ do hereby certify that, in my judgment, the ground (or if there be several, each of the grounds) of appeal in the above petition presented by me on behalf of the said _____ is a good ground of second appeal.

Dated, the _____ day of _____.

Provided that in the case of an appeal against a decree or order passed after remand by this Court, copies of judgment or decree of the lower Courts passed before the case was remanded need not be furnished.

7. Every party who files an appeal in person shall insert in his memorandum of appeal, or otherwise give in writing to the Deputy Registrar, an address at which notices and other processes in the appeal may be served upon him; and any notice or other process sent to such address by registered letter shall be presumed to have been duly served upon such party.

8. No memorandum of appeal from an Appellate Decree or from an Original or Appellate Order presented in person by any party to the appeal shall be registered without an order of the Division Court before whom the party presenting the appeal shall appear in person.

9. In the case of an application for revision, the application shall be accompanied by certified copies of each of the following documents:—

(i) the judgment, decree or order to which the application relates;

(ii) if the judgment, decree or order to which the application relates was a judgment, decree or order delivered by a Court sitting in appeal, the copies of the judgment, decree or order of the Court of First Instance.

10. (1) When a memorandum of appeal is not in proper form and/or is not accompanied by the necessary copies of papers, the Registrar may allow time within which such memorandum must be amended, and/or the necessary papers filed, or may lay the same before the Division Court for orders.

(2) If a memorandum of appeal is presented for admission without copies of the judgment and decree or order appealed from, it shall forthwith be returned to the Advocate or party presenting it. If such copies are filed after the period of limitation has expired the memorandum shall be presented direct to the Division Court.

11. If in a memorandum of appeal the ground is taken that there is in fact on the record no evidence or admission to support the decree, such memorandum shall state sufficiently the material finding in support of which there is no evidence or admission on the record.

12. Except as provided in rule 13 of this Chapter, no memorandum of appeal, no memorandum of objection under Order XLI, rule 22 or 26, Civil Procedure Code, no application for review, and no application for leave to appeal *in formâ pauperis* shall be presented for admission unless the same bears an office report as to limitation of time; and, when a stamp is required, as to the sufficiency or otherwise of the stamp; or, in the case of a stamp of which the sufficiency cannot be ascertained, that the report as to the sufficiency of the stamp will be made on the receipt of the record or after further enquiry. Such report shall ordinarily be endorsed on the memorandum or application and returned by the Stamp Reporter before 4 p.m. on the day on which such memorandum or application was made over to the Stamp Reporter for examination.

In cases in which it may not be possible for the Stamp Reporter to return the memorandum of appeal or application on the day on which such memorandum or application was made over to him for examination, the time taken by the Stamp Reporter in preparing his report shall be excluded from the prescribed period of limitation:

Provided that if the Stamp Reporter on examination certifies that the memorandum or application is not barred by limitation, is sufficiently stamped and complies with the provisions of these Rules, the date on which such memorandum or application was made over to the Stamp Reporter for examination, shall be deemed to be the date of presentation to the Deputy Registrar or such other officer as the Registrar may appoint under rule 14 of this Chapter.

13. On the first day on which the High Court re-opens after the annual long vacation a memorandum of appeal or objection under Order XLI, rule 22 or 16, may be presented to the Deputy Registrar or such other officer as the Registrar may appoint for the purpose, and an application for leave to appeal in *formâ pauperis* may be presented to the Division Court, without the office report, as required by the preceding rule:

Provided that all memoranda of appeal or objection as aforesaid which are presented for admission on the re-opening date after the High Court's annual vacation shall be dealt with in accordance with the provisions of rule 18 of this Chapter, after the Stamp Reporter has recorded his report.

14. Every memorandum of appeal (other than a memorandum of appeal from an Appellate Decree filed by a party to the appeal in person) or memorandum of objection under Order XLI, rule 22 or 26, Civil Procedure Code, shall be presented in the High Court to the Deputy Registrar or such other officer as the Registrar may appoint for the purpose by the appellant in person, or by his recognised agent, or by an Advocate appointed under the provisions of Order III, rule 4, Civil Procedure Code, or by some person appointed in writing by such advocate to present the same:

Provided that any such memorandum, which bears a report of the Stamp Reporter to the effect that the prescribed period of limitation has expired, shall be presented direct to the Division Court.

15. Applications for review and memoranda of Appeals from Appellate Decrees or from Original or Appellate Orders filed by parties to the appeal in person shall be presented direct to the Division Court concerned after the report prescribed in rule 12 above has been obtained.

"Application for revision shall be presented to the Court with the certificate from the Commissioner

of Affidavits prescribed by Rule 2A of Chapter IV and shall exhibit the particulars required by Rule 2 of that Chapter."

(No. 24, Notification No. 11991G., dated the 14th September, 1937.)

16. Applications for leave to appeal *in formâ papuperis* shall be presented with the report of the Stamp Reporter in open Court to the Division Court concerned in accordance with the provisions of Order XLIV, Civil Procedure Code.

17. The officer to whom the memorandum is presented under Rule 14 of this Chapter shall endorse on every such memorandum the date of the presentation and shall send the same to the Stamp Reporter. The Stamp Reporter, if the memorandum is not barred by limitation and is sufficiently stamped and complies with the provisions of these rules, shall record a report to that effect and shall, after the Officer-in-charge of the Judicial Department has satisfied himself that the stamps have been properly punched and defaced under the rules and that there are no obvious defects,

(a) in the case of an appeal from an Original Decree and an appeal under the Workmen's Compensation Act, admit it and cause it to be registered and notice to issue to the respondent,

(b) in the case of an appeal from an Appellate Decree or an appeal from an Order, other than an appeal under the Workmen's Compensation Act, admit it, cause it to be registered, and posted to a Bench for hearing under Order XLI, Rule 11, Civil Procedure Code, and

(c) in the case of a memorandum of objection under Order XLI, Rule 22 or 26, Civil Procedure Code, admit it and cause it to be registered.

NOTE.—The scrutiny of the Officer-in-charge of the Judicial Department under this Rule shall also include an examination of at least 5 per cent. of the memoranda submitted to him with

a view to seeing whether the report as to sufficiency of stamps is correct.

(No. 57, Notification No. 1419G., dated the 3rd February, 1938.)

18. (1) If there is a reasonable doubt as to the amount of court-fee leviable on any memorandum of appeal which an Advocate or a party desires to present, he shall apply to the Registrar, as Taxing Officer, for his decision as to the court-fee payable, and the Registrar shall pass an order accordingly and fix a period within which the requisite court-fee must be paid.

If the requisite fee is not paid within the period fixed, the case shall be laid before the Division Court for orders.

(2) If the Stamp Reporter, on a memorandum being presented to him, finds that it has been insufficiently stamped, he shall make a note thereon as regards the deficiency and shall return it, with as little delay as possible, to the Advocate or the party presenting it. If the Advocate or the party refiles it having supplied the deficit court-fees, within the prescribed period of limitation, the Stamp Reporter shall record a note to that effect on the memorandum which shall then be admitted.

(3) The Advocate or the party to whom a memorandum is returned under clause (2) may apply to the Registrar for time to put in the requisite court-fee. On such application being made the Registrar, if he is satisfied that the insufficiency of the court-fee was due to a mistake on the part of the applicant as to the court-fee payable, may fix a period within which the additional court-fee must be paid. In other cases or when the requisite fee is not paid within the period fixed, the Registrar shall lay the matter before the Division Court for orders.

(4) If a memorandum which has been returned under clause (2) and for filing which no time under clause (3) has been fixed is refiled, sufficiently

stamped, after the period of limitation has expired, it shall be presented direct to the Registrar and the latter may pass an order for the admission thereof or lay it before the Division Court for orders according as, in his opinion, a case as to mistake as referred to in clause (3) has been made out or not.

(5) An application made under clause (3) or a memorandum of appeal refiled under clause (4) must be accompanied by an affidavit explaining the insufficiency, unless the insufficiency is due to a mistake which is apparent on the face of the papers filed.

19. The Stamp Reporter or the Bench Clerks, as the case may be, must see that section 30 of the Court-fees Act is strictly complied with and that no document requiring any court-fee stamp is filed or acted upon in any proceeding either before the Court or in its offices, until the stamp has been effectively cancelled.

20. In any case in which a memorandum has been returned for amendment under the orders of the Registrar, it shall be the duty of the Deputy Registrar to attest the amendment by his signature.

21. If a memorandum bears a note that a report as to the sufficiency of the stamp will be made on the receipt of the record, the Deputy Registrar or such other officer as the Registrar may appoint shall note thereon the date of presentation and shall retain it pending the receipt of the report.

22. Every memorandum retained under the provisions of rule 21 shall, immediately after the receipt of the record, be examined by the Stamp Reporter, who shall endorse on it his report as to the sufficiency of the stamp and shall thereupon proceed in the manner provided in rules 17 and 18 above.

23. Whenever the Stamp Reporter finds that a document which ought to bear a stamp under the Court-fees Act, 1870, has been through mistake or inadvertence received, filed or used in the Court with-

out being properly stamped, he shall report the fact to the Advocate who presented such document. Such Advocate shall at once initial the report and shall within one week thereafter, or within such further time as the Taxing Officer may allow, note on it whether he accepts or disputes the accuracy thereof. If such note is not made within such time, it shall not be open to such Advocate to dispute the accuracy of the report.

24. If a memorandum which has been dealt with under rule 18 above is duly stamped or amended under rule 20 within the time fixed by the Registrar or the Court, as the case may be, the Registrar or the Court shall admit it and cause it to be registered. If such memorandum is not duly stamped or amended within the time allowed, the Court may reject such memorandum or pass such other order relating thereto which it may consider proper.

25. An application supported by an affidavit shall be filed for an order for amendment of the memorandum of an appeal consequent on the death of a party including a party whose heirs are already on the record:

Provided that where such amendment relates to a matter in respect of which an order has already been obtained in the court below but has not been incorporated in the decree of that court, no application shall be necessary but an affidavit setting out the particulars will be sufficient.

26. If a respondent who was described as a minor in the decree to be appealed from has attained majority before the appeal is preferred, and the appellant impleads him as a major in the memorandum of appeal, the same shall be accompanied by an affidavit stating the said fact.

27. Where the Deputy Registrar is appointed guardian *ad-litem* of minor respondents under Order XXXII, rule 4 (4), Civil Procedure Code, the appellant at whose instance such appointment is made, shall, within 21 days, deposit with the Accountant of the

Court the sum of Rs. 51 or Rs. 19, as the case may be, as cost to enable the Deputy Registrar to appoint an Advocate on his behalf, and shall within the same time file in Court an indemnity bond in favour of the Deputy Registrar.

28. If a respondent, who was described as a minor in the memorandum of appeal, appears as a major he shall, when making such appearance, file an affidavit stating the fact that he has attained majority together with the date when he did so. On such affidavit being filed, the appellant, unless he disputes the fact of the respondent attaining majority, shall file an application, which need not be verified, for amending the memorandum of appeal, and thereupon the memorandum of appeal shall be amended accordingly. If no such affidavit is filed by such respondent, he shall be precluded from appearing as a major and the appellant shall be required to put in the costs, etc., for the appointment of the Deputy Registrar as guardian *ad litem* of the said respondent:

Provided that it shall always be open to the appellant to ask for such amendment on making an application supported by an affidavit for the purpose.

29. Where in an appeal or other proceeding the natural guardian of a minor respondent or opposite party, upon being duly served with notice, does not appear in due time and the Deputy Registrar is appointed guardian *ad litem*, the natural guardian shall not be allowed to appear unless he files an application supported by an affidavit making out sufficient ground for the removal of the Deputy Registrar as required by rule 11 of Order XXXII of the Civil Procedure Code. Notice of such application shall be duly served by the applicant upon the Deputy Registrar and if an order is made removing the Deputy Registrar it shall be made subject to the payment by the natural guardian of any cost that the Deputy Registrar may have incurred as guardian *ad litem* in respect of Advocates' fees, etc.

30. On any Court day on which no Bench is or has been sitting, any memorandum of appeal or application which might be barred by time, and which is entertainable only by a Bench, may be presented to the Deputy Registrar or, in his absence from Court on that day, to an Assistant Registrar on the Appellate Side of the Court, who shall certify thereon that such application was on that day presented to him: provided always that no such presentation to the Deputy Registrar or an Assistant Registrar shall be of any effect unless such application be presented to a Bench on the next subsequent day on which a Bench is sitting.

31. When an Appeal from an Original Decree *or an appeal under the Workmen's Compensation Act* or an application for revision has been admitted and registered, or, in the case of Appeals from Appellate Decrees and Appeals from Orders, *other than an order under the Workmen's Compensation Act*, when the Court has passed an order to the effect that the appeal will be heard, it shall be the duty of the Deputy Registrar to send a notice [*see* Forms Nos. 1 and 2 (Civil), pages 175 and 176, Appendix I] immediately to the Court from whose decision the appeal is preferred, or the application is made, and to call for the transmission, ordinarily within seven days, of the record and all material papers:

Provided that in every appeal from an interlocutory order made in a suit and coming under Order XLIII, rule 1, clauses (q), (r) and (s), Civil Procedure Code, copies only of the plaint, written statement (if any), order-sheet and the papers directly relating to the interlocutory proceedings in appeal shall be called for unless the Court or the Registrar otherwise directs.

31A. *When calling for the record and material papers under the preceding rule, the Deputy Registrar shall draw the attention of the lower court to Note 1 to Rule 547 of the Civil Rules and Orders relating to the transmission of cumbrous and bulky exhibits and shall call for such of them, if any, as have been directed by the Court or the Registrar to be called for.*

NOTE.—*Parties or their Advocates desiring bulky exhibits to be called for in cases other than appeals from Original Decrees may apply to the Registrar before a case has appeared in the Daily Cause List, and to the Court thereafter, for an order under this Rule, setting forth sufficient grounds in support of the application; such application when made to the Registrar need not be stamped or verified but should comply with Rule 6 of Chapter IV of these Rules.*

(No. 58, Notification No. 1419G, dated the 3rd February, 1938.)

32. Whenever it shall be impossible for the Lower Court to comply with the requisition within the time stated such Court shall report the reason of its inability and shall ask for such further time as may be necessary.

33. The fee for the issue of the notice to the respondent under Order XLI, rule 14, Civil Procedure Code, shall be paid into Court by the appellant:—

- (a) in the case of Appeals from Original Decrees and appeals under the *Workmen's Compensation Act*: within two weeks of the date of registration of the appeals, notice whereof shall be given in the manner prescribed for Appeals from Appellate Decrees in Rule 59, Chapter IX;
- (b) in the case of Appeals from Appellate Decrees and appeals under the *Workmen's Compensation Act* and Appeals from Orders, other than those which are dismissed at the preliminary hearing under Order XLI, rule 11, Civil Procedure Code, and other than appeals under the *Workmen's Compensation Act*, within 30 days of the date on which the Court passes an order admitting the appeal.

33A. *The fee for the issue of notice under Order XLI, Rule 22 (3) shall be paid, together with the necessary copies of cross objection, within one week from the date of the registration of the memorandum of cross objection.*

(No. 29, Notification No. 11991G., dated the 14th September, 1937.)

34. (1) The appellant within thirty days from the registration of the memorandum of appeal, notice whereof shall be given in the manner stated in Rule 33 (a) above, shall, in the case of Appeals from Original Decrees, deposit with the Accountant, in one instalment, the sum of Rs. 50 if the appeal does not exceed Rs. 10,000 in value; Rs. 75, if such appeal exceeds Rs. 10,000 in value but does not exceed Rs. 15,000; and Rs. 100 if such appeal exceeds Rs. 15,000 in value.

(2) (a) In the case of Appeals from Appellate Decrees and Appeals from Remand Orders under Order XLI, Rule 23, Civil Procedure Code, in which the valuation of the appeal exceeds Rs. 50, and Appeals under Chapter X of the Bengal Tenancy Act, the appellant shall, within 30 days from the date of registration of an appeal, deposit, in one instalment, the sum of Rs. 10 and the respondent, at the time of entering appearance, Rs. 5 in full payment of the costs of the preparation of a typewritten paper-book:

Provided that in an Appeal from Appellate Decree in which there was an order of remand passed by the lower appellate court, and in which the previous judgments (of both original and appellate courts) will have to be included in the paper-book, the charge of the paper-book to the appellant will be Rs. 12, instead of Rs. 10, and to the respondent Rs. 6, instead of Rs. 5.

(b) In the case of analogous appeals of the classes mentioned in clause (a) above, the appellant shall, within 30 days from the date of registration of an appeal, deposit, in full payment of the costs of the preparation of a typewritten paper-book, the sum of Rs. 10 for the first appeal, the charge for the analogous appeals being Re. 1-8 per appeal up to four such appeals, and annas 12 for every such appeal in excess

of four, the additional charge not exceeding Rs. 10 in any case.

In such cases, the respondent, on entering appearance, shall deposit Rs. 5 for the first appeal and half the charges prescribed for the appellant in respect of the analogous appeals, the additional charge not exceeding Rs. 5 in any case. The principle of this rule will apply to each set of respondents who enter appearance through separate Advocates.

(c) Where analogous appeals have been presented in separate batches, each batch of such appeals presented by the same appellant or by the same Advocate representing different appellants, shall be considered as a separate batch of analogous appeals, and the cost of the preparation of the typewritten paper-book shall be deposited for each batch of such appeals separately calculated according to the provisions of clause (b). In the case of single appeals presented by different Advocates or appellants in person, such costs shall be deposited as provided in clause (a) for each such separate appeal, notwithstanding that such appeals may be analogous to others.

(3) In the case of First Appeals from Orders passed by a Provincial Civil Court (including orders under section 47, Civil Procedure Code) the appellant shall, at the time of paying the fee for the issue of the notice to the respondent under Order XLI, Rule 14, Civil Procedure Code, deposit the sum of Rs. 30 towards the cost of the preparation of the paper-book in the Appeal.

35. (1) Whenever it is necessary under these Rules to issue a notice to a respondent under Order XLI, rule 14, Civil Procedure Code, the appellant shall, simultaneously with the filing of the fee for the issue of such notice, file printed forms of such notices, duly filled up in the prescribed form No. 3 (Civil), page 177, Appendix I, the date of appearance and the date of the notice being left blank.

(2) The information entered in the forms must be filled up in the vernacular (or in English if the respondent to be served is a European British subject or a resident of Calcutta) in a bold, clear and easily legible handwriting.

(3) The date fixed for appearance will be inserted in the form and the notice will be dated and signed by an Officer of the High Court.

(4) The necessary number of the printed forms of notice in the prescribed form will be supplied to the appellants, or their Advocates, free of cost on application to the Forms Clerk.

(5) The Registrar may, in his discretion, direct in any particular case that the forms of notice be entirely filled up in the office of the Court.

36. (a) If the fee for the issue of the notice to the respondent be not paid into Court in the manner provided by rule 33, or the deposit required under rule 34 be not made within the time allowed by that rule, or if the notice forms, duly filled up, be not filed as provided in the last preceding rule, the appeal shall be placed before the Registrar who may, in his discretion, either grant further time for making such payment, or deposit, or filing the notice forms, or direct the appeal to be placed before the Court for orders.

(b) No process-fee for the issue of notice to the respondent, or deposit under rule 34, or notice form filled up in accordance with the provisions of rule 35, shall, except under the orders of the Registrar, be accepted after the expiry of the period allowed by these Rules.

No order shall be passed under this rule except upon an application duly stamped with a court-fee of Rs. 2 setting forth sufficient grounds for the delay: Provided that if it is deemed necessary orders may be passed directing an affidavit to be filed in support of the application for extension of time:

Provided, further, that if the fees referred to in

these Rules be paid into court out of time, but before the case is listed in Lawazima before the Registrar, the filing of an Application may be dispensed with.

37. If the process-fee be paid and the notice forms be filed within the period prescribed by rules 33 and 35, or within the further period allowed by the Registrar, the notice in the prescribed form shall at once issue on the respondent.

38. If such respondent reside within the jurisdiction of the Court from whose decree or order the appeal is preferred, the notice to such respondent shall be sent to the presiding officer of such Court together with the proceeding of the High Court calling for the record.

39. Notice for service on respondents or opposite parties residing in any district other than that from which the appeal, application, etc., comes, shall be sent by the Deputy Registrar to the proper Court in the district in which such notice is to be served. If, however, the opposite party, or any of the parties to be served, resides in the same district but outside the jurisdiction of the Court from which the appeal, application, etc., comes, the notice shall be sent for service to the Court within whose jurisdiction the party resides, if known; if not known, then to the Court from which the appeal or application comes, directing the latter to forward it to the proper Court within the jurisdiction of which the notice is to be served. The Court which serves any notice shall in every case make its return of service, or of the failure of service (as the case may be), direct to the High Court.

39A. Where the jurisdiction within which a party resides is not known the notice in respect of such party shall be accompanied by a duplicate copy for the purpose of return of service.

(No. 4, Notification No. 25G., dated the 4th January, 1937.)

40. On receipt of the proceedings of the High Court, transmitting the notices of appeal or application,

the Lower Court shall cause their service without the payment of any further fee and without any further action by the Appellant: Provided that:—(1) any additional fees for boat-hire or ferry toll exigible under rule 4 of the Rules framed under clause (i) of section 20 of the Court-fees Act, VII of 1870 [see Chapter 12 of these Rules], shall be deposited by the appellant or applicant in the Court of service; (2) the appellant or applicant or some one employed by him may, in any particular case if he so desires, accompany the serving officer for the purpose of facilitating the service of the processes.

41. The time allowed for service of the notice shall be specified therein by the Deputy Registrar in accordance with the time-table in rule 46 and shall commence from the date on which it is despatched, which shall, in general, be the day on which the process-fee is deposited and the notice forms are filed.

42. The Lower Courts shall issue all notices immediately on receipt thereof and in their returns of service shall, in every instance, insert (a) date of receipt of notice; (b) date of delivery to the serving officer; and (c) date of receiving it back from him.

43. It shall be the duty of the Lower Court to cause the notice to be served in sufficient time before the date fixed, and, if such service be impracticable, to state, when returning it to the High Court, the reasons thereof. The Lower Court shall satisfy itself that a valid service has been made, or that there has been a failure of service, and shall certify such opinion with the reasons in case of failure of service. The certificate shall be accompanied by the return of service, or of failure to serve the notice, and the declaration of the serving officer specifying the fact and mode of service or the reason for non-service.

44. The date to be fixed for the hearing of the appeal shall be the 21st day after the date on which the time for the service of notices expires, provided

that if such day be a Sunday or holiday, the first open day next following shall be the date fixed for the hearing.

45. In an appeal in which more than one respondent is to be served with the notice under Order XLI, rule 14, Civil Procedure Code, the Deputy Registrar, in fixing the time for the hearing of the appeal, shall fix the 21st day after the day fixed for the service of the notice of appeal on the respondent for whom the longest period is allowed under the following rule.

46. The following time-table shall be observed:—

District.	Number of days allowed for service of notice of appeal on the respondent.
The Municipalities of Calcutta and Howrah	10 days.
All Districts of Bengal (excluding the Municipalities of Calcutta and Howrah)	21 „
Assam	28 „

47. When in an appeal or other proceeding the Court orders a notice to show cause to issue, such notice shall ordinarily be issued to all parties to such appeal or other proceeding and to any person whom it is proposed to make a party. If the person to whom the notice is to issue is a minor, a person of unsound mind, or other disqualified person, it shall also be issued to the guardian or next friend of such person.

48. In every case in which an appeal has been admitted, the Registrar shall cause paper-books to be prepared in accordance with the provisions of Chapter IX.

CHAPTER VI.

APPEALS TO THE PRIVY COUNCIL.

1. The provisions of Chapter IV shall apply, so far as may be, to petitions under Order XLV, rule 2, Civil Procedure Code.

2. Matters connected with appeals to His Majesty in Council, other than those with which the Registrar is authorised to deal, shall ordinarily be heard at such time as the Division Court appointed to deal with such matters shall fix.

3. Matters relating to (1) service of notices or other processes; (2) substitution of parties and appointment or discharge of next friends or guardians *ad litem* of minors or persons of unsound mind, before the admission of an appeal; (3) preparation of paper-books; (4) return of documents, and (5) matters not expressly required to be laid before the Division Court for orders, shall be dealt with and disposed of by the Registrar.

4. Applications for an order (1) to transmit Orders in Council for execution to the lower courts, where no special directions are required; (2) to transmit securities to the mufassal courts for investigation as to their sufficiency; and (3) for refunds of surplus deposits made for the purpose of preparing translations, manuscripts, etc., may, in ordinary circumstances, be made to, and disposed of, by the Registrar without notice to the opposite party other than inclusion in the daily cause list.

5. In all other applications regarding matters connected with appeals to His Majesty in Council, including petitions for leave to appeal, notice under rule 6 of this chapter is necessary, in addition to any other notice herein prescribed.

6. Notice of an application under the preceding rule shall be given by the applicant or his advocate

by delivering to the proper person (ordinarily the advocate for the appearing opposite party) a copy of the petition, together with a notice, in the following form:—

“Take notice that this application will be filed with the proper officer of the Court, and that you are required to attend and show cause against the application at the hearing, if you desire to do so.”

7. All applications which have been duly filed with the clerk-in-charge of Privy Council Appeals will be set down in a list in the order in which they are notified to him. The cases in the list will be called on *pereinptorily* in their turn: and if, by the fault of the applicant, the application cannot be proceeded with, it will be liable to be dismissed.

8. Every petition under Order XLV, rule 2, Civil Procedure Code, shall be presented to the Stamp Reporter. Such petition shall be accompanied by—

- (1) a court-fee of Rs. 16 for drawing up an estimate of the expense of preparing and forwarding to the Registrar of the Privy Council the record of the case;
- (2) the fee for the issue of the notice of the application for leave to appeal to all the respondents who did not enter appearance in the High Court at the hearing of the appeal;
- (3) forms of notices to all respondents duly filled up in the manner prescribed in rule 15; and
- (4) certified copies of the judgment and decree complained of.

9. If the Stamp Reporter finds that the petition is bared by limitation he shall forthwith lay the same before the Court for orders. If it is filed within the prescribed period of limitation he shall lay it before the Registrar with a report whether it has been filed

in accordance with the rules of the High Court and whether the stamps filed therewith are sufficient.

10. Upon receipt of such petition with the Stamp Reporter's report, the Registrar shall, in case the petition is not in proper form or is not accompanied by the requisite court-fee stamps, fix a period within which the additional fees may be paid or within which the petition may be amended, or lay the same before the Court for orders. If such petition is sufficiently stamped and complies with the provisions of the rules, he shall, upon receipt of such petition, direct notice to be served on the opposite party to show cause why the certificate should not be granted.

11. Where more than one such application is made by the same party at the same time relating to decrees or final orders made in pursuance of the same judgment and only one record is required to be printed, the Registrar may order that only one court-fee of Rs. 16 be paid, or that one certified copy of the judgment be accepted, or may refer the matter to the Court for orders.

12. As soon as the Registrar has directed notice to be served under rule 10 of this chapter, the clerk-in-charge of Privy Council Appeals shall forthwith proceed to issue notice of the application for leave to appeal to all the respondents who did not appear at the hearing of the appeal before the High Court. He shall also serve notices of the application for leave to appeal on the advocates for the respondents who appeared at the hearing before the High Court.

13. A notice which it is necessary to serve under these rules (other than notices under rule 6 of this chapter) or under Order XLV, rule 3 or rule 8, Civil Procedure Code, may be served in the manner provided by the Code for the service of notices, or, unless the Court or the Registrar otherwise directs, upon any advocate who appeared for the party to whom notice is to be given in the appeal to this Court, unless the vakalat-

nama of such advocate has been cancelled with the sanction of the Court. If there is no advocate upon whom notice can be served, then, unless the Registrar shall otherwise direct, the notice must be served upon the party in Calcutta through the Sheriff, or in the mufassal through the proper court in the district in which such notice is to be served, on paying the usual fee. The fee for the issue of the notice must be paid into Court at the time of filing the application. Such payment is to be made by stamp affixed to the notice intended to be served.

14. Nothing in these rules requiring any notice to be served on, or given to, an opposite party or respondent shall be deemed to require any notice to be served on, or given to, the legal representative of any deceased opposite party or deceased respondent in a case where such opposite party or respondent did not appear either at the hearing in the High Court or at any proceedings subsequent to the decree of the High Court :

Provided that notices under sub-rule 2 of rule 3 and rule 8 of Order XLV, Civil Procedure Code, shall be given by affixing the same in some conspicuous place in the court-house of the Judge of the district in which the original suit was brought and by publication in such newspapers as the Court may direct.

Notices under the proviso to this rule may be issued in the manner prescribed to the legal representatives of the deceased respondent or opposite party in question without specifying such legal representative by name.

15. (1) With the fee for the issue of the notice the applicant shall also file printed forms of such notice duly filled up in the prescribed form [*see* Form No. 6 (Civil), page 179, Appendix I] the date of appearance and the date of the notice being left blank.

(2) The information entered in the form must be filled up in the vernacular (or in English if the party

to be served is a European British subject or a resident of Calcutta) in a bold, clear and easily legible hand-writing.

(3) The date fixed for the hearing of an application will be inserted in the form and the notice will be dated by the clerk-in-charge of Privy Council Appeals, before it is signed by the Deputy Registrar.

(4) The necessary number of printed forms of notice in the prescribed form will be supplied to applicants or their advocates, free of cost, on application to the Forms Clerk.

(5) The Registrar may, in his discretion, direct in any particular case that the forms of notice be entirely filled up in the office of the Court.

16. The date fixed for the hearing of the application shall be regulated by the time-table prescribed in rule 46, chapter V.

17. As soon as it shall appear that the notices of the application for leave to appeal have been duly served on all the respondents, the clerk-in-charge of Privy Council Appeals shall lay the application for leave to appeal before the Division Court for orders under Order XLV, rule 3 (1), Civil Procedure Code.

18. On the receipt of a report from the court of first instance under Order XLV, rule 5, Civil Procedure Code, as to the amount or value of the subject-matter of the suit and of the proposed appeal, notice shall forthwith be given to the applicant and to the appearing respondents, and any party objecting to the report shall, within seven days from the date of the notice, file his objections, if any, and also serve a copy thereof on the other side. The case shall thereupon be laid before the Court for orders without delay.

19. Immediately after the grant of the certificate, the clerk-in-charge shall call for the transmission, ordinarily within seven days, of the record and all material papers.

20. The advocates for the parties shall be notified of the arrival of such record as soon as it is received in the office of the Court.

21. Whenever it shall be impossible for the lower court to comply with the requisition within the time stated, such Court shall report the reason of its inability, and shall ask for such further time as may be necessary.

22. (1) Immediately after the grant of a certificate for leave to appeal, the clerk-in-charge shall prepare and serve on the applicant an estimate with reference to (a) Parts I and II of the paper-book used in the appeal to the High Court; and (b) the papers required to be added under rule 25, *post*, excluding item (7) of the latter rule. The amount due on such estimate shall be deposited within the time limited by Order XLV, rule 7 of the Code of Civil Procedure.

(2) If the application is for leave to appeal from the judgment of the High Court in an appeal other than an appeal from an original decree or order, the applicant shall deposit a lump sum of Rs. 400 within the time limited by Order XLV, rule 7, on account of the cost of the preparation of complete Parts I and II of the paper-book. The estimates in such cases will be prepared and served as soon as possible after the receipt of the records and the filing of lists by the parties, but the said deposit of Rs. 400 shall be made within the prescribed time irrespective of the service of estimates.

23. (1) If the appellant desires to include in Parts I or II of the paper-book used at the hearing of the appeal in the High Court any papers on which the decision of the appeal to the Privy Council depends, and which have not already been included in the paper-book; or to exclude therefrom any papers on the ground that they are irrelevant to the subject-matter of the appeal to the Privy Council, he shall

within one week from the date of service upon him of the notice under rule 20, apply to the Registrar for an order accordingly, and file with his application a complete list of the papers to be included in, or excluded from, the printed paper-book; and he shall, at the same time, serve copies of his application and list on the appearing respondents.

(2) Within one week from the date of the receipt by them of copies of the application and list mentioned in clause (1), the appearing respondents shall, if they so desire, file a similar application and list and simultaneously serve copies thereof on the appellant.

(3) (a) In the case of applications for leave to appeal from the judgment of the High Court in an appeal other than an appeal from an original decree or order the appellant shall file a complete list of the papers which he wishes to include in Parts I and II of the paper-book with the clerk-in-charge within two weeks of the service of notice under rule 20, and shall simultaneously serve a copy thereof on the appearing respondents who shall thereupon prepare and file their lists with the clerk-in-charge within one week of the receipt of the appellant's list and simultaneously serve copies thereof on the appellant.

(b) If any party considers that any paper, or portion thereof, should be included in, or omitted from, the lists, he may within one week from the receipt of a copy of the list of the other side, and after giving notice to the other side of his intended application, apply to the Registrar for an order that such paper, or portion thereof, should be inserted in the paper-book, or be omitted therefrom.

(4) It shall be competent to the Registrar to pass any orders which, with reference to the said applications, he may consider proper, and any costs incurred on this account shall be borne in such manner as the Registrar may direct: Provided that if the Registrar is unable to arrive at any conclusion as to

whether a document should be included or not, and as to which party should bear the cost of inclusion of any document, he may make a note, which will form part of the paper-book, to that effect. Such applications shall bear a certificate under the hand of the advocate presenting them to the effect that the inclusion of the papers specified in their respective lists is necessary in order to the decision of the appeal, or that the papers are irrelevant and should be excluded from the printed record required for the Privy Council.

24. Parts I and II of the paper-book shall contain brief marginal notes, but shall otherwise be prepared in accordance with the provisions of Chapter IX of these Rules.

Each part shall have a complete index of all the papers included in it; and all the documents omitted from the transcript shall be enumerated in a type-written list to be transmitted with the record.

* * * * *

25. The following documents shall be added to the papers of Part I of the paper-books which have already been printed:—

- (1) the proceedings in the High Court, if any;
- (2) the judgment and decree of the High Court;
- (3) the application for leave to appeal, affidavits, etc.;
- (4) the grounds of appeal;
- (5) the certificate granting leave;
- (6) the order admitting the appeal; and
- (7) any document not already included in Part I on which the decision of the appeal depends.

The additional documents should be printed strictly in chronological order and should be paged at the foot of each page in continuation of the previous paging of Part I, and shall contain brief marginal notes.

The parties shall agree to the omission of formal and irrelevant documents, but the description of the documents may appear (both in the Index and in the Record), if desired, with the words "not printed" against it.

26. In Part I of the transcript record to England the names of all the parties must be shown in full in the following documents:—

- (a) the plaint,
- (b) the lower Court's decree,
- (c) the memorandum of appeal to the High Court,
- (d) the decree of the High Court,
- (e) the application for leave to appeal to His Majesty in Council,
- (f) the proceedings of the High Court connected with the order of admission of appeal to His Majesty in Council,
- (g) the High Court's order of admission of the appeal to His Majesty in Council.

The recital of the names in full should be avoided in the following documents:—

- (a) the High Court's judgment, or in the Cause Title.
- (b) the Registrar's certificates of service of notice of admission of appeal, and of despatch of the transcript record.

27. The following charges shall be payable in respect of the matters specified:—

(a) Cost of estimate (payable by the appellant in court-fee stamps under-rule 8)	16 0 0
(a1) Estimating charge at 10,000 words per rupee (payable by the respondent in respect of his papers)	
(a2) Estimating charge for maps—12½ per cent. of the cost of tracing the same	
(a3) Estimating charge for photographs—12½ per cent. of the cost of producing the negative.	
(b) Translation of vernacular portion of record per 150 vernacular words, three figures being counted as one word	1 0 0

- (c) Examining translations for 300 vernacular words, three figures being counted as one word 1 0 0
- (d) Copying English portion of record The rate specified in Chapter XIII, rule 7.
- (e) Editing the paper-book, per page 12 annas if the paper-book is printed; and 6 annas if it is typed.
- (f) Lithographing, drawing or tracing maps (where necessary) Actual cost.
- (g) Printing fee for 50 copies—
Ordinary matter, with marginal notes Actual cost not exceeding Re. 1-8-0 per page.
- Tabular matter Actual cost.
- (h) Printing marginal notes in Parts I and II of the paper-book, per page Actual cost not exceeding six annas per page.
- (i) Certifying one copy of the printed record for every 8 printed or manuscript pages or part thereof 1 0 0
- (j) Preparation of Index for every 16 papers or part thereof 1 0 0
- (k) Taxing the paper-book costs One annas for every printed, and half-anna for every typed, page added to the paper-book of the High Court appeal; and one anna for every four pages, or less, of that paper-book.

- (1) Cost of transmission (including Rs. 5 to the Court Keeper for supervising the packing and despatch of printed record, and Rs. 2 to dufttry for packing)

Estimated amount.

28. The estimate shall include the matters referred to in the preceding rule and be framed in accordance with the charges above specified. Any applicant who has filed his application for leave to appeal shall be required to pay the expenses actually incurred in connection with the preparation of the estimate, whether the appeal be admitted or not.

29. The applicant may, at the next sitting of the Registrar, object to such estimate, but such objection is not to delay the making of the deposit.

30. If it subsequently appears that the amount which either party has been required to deposit is insufficient to defray the cost of preparing his portion of the paper-book, the clerk-in-charge of Privy Council Appeals shall estimate the additional amount required and shall give notice thereof to such party. It shall be competent to the Registrar to pass orders regarding the payment of such additional amount as he may consider proper.

31. All documents which are to be included in the transcript for the Privy Council, if not originally in English, shall be translated into that language.

32. The applicant shall furnish security for the costs of the respondent within the period prescribed by Order XLV, rule 7, Civil Procedure Code.

33. In all cases the security offered under Order XLV, rules 7, 10 and 14, Civil Procedure Code, shall consist either of cash or Government securities to the extent of Rs. 4,000 (market value) :

Provided that the Court at the time of granting the certificate may, after hearing any opposite party

who appears, order on the ground of special hardship that some other form of security may be furnished :

Provided further that no such order shall be passed unless the opposite party has been served by the appellant with notice seven clear days before the date of hearing, setting forth the nature of the security proposed to be furnished. No adjournment shall be granted to an opposite party to contest the nature of such security.

34. When, in the special circumstances of the case, the Court allows immovable property to be accepted as security, the party finding the security shall file a mortgage bond, duly registered, together with a specification of the title to the property. Such bond shall be filed within the time limited by Order XLV, rule 7 of the Code of Civil Procedure. When such bond has been filed, the Registrar shall, if the property be situate in Calcutta, refer the matter to the Registrar on the Original Side for the security to be tested ; if in the mufassal, by the Judge of the district in which the immovable property offered as security is situate.

35. Immediately upon the arrival of any report as to the sufficiency of any security, the clerk-in-charge of Privy Council Appeals shall issue a notice in the prescribed form to the parties concerned, specifying the nature of the case. All parties desirous of objecting to the report shall, within six days from the date of the notice, file their objections, if any, and serve a copy of the same upon the other parties to the appeal. All such objections will be disposed of at the next sitting by one of the Division Court after the arrival of the report.

36. If the security tendered be found insufficient by the Division Court, the appellant shall, within six weeks of the date of such finding deposit Rs. 4,000 in cash, or Government securities to the extent of Rs. 4,000 (market value), or to such amount as will bring up the value of the security to Rs. 4,000.

37. In case the last day for making the deposit or giving the security under Order XLV, rules 7, 10 and 14, Civil Procedure Code, shall fall on a day upon which the Court is closed, the deposit may be made, or the security given, upon the first day upon which the Court re-opens.

38. When the security has been furnished and the deposit made in accordance with the provisions of Order XLV, rule 7, Civil Procedure Code, the clerk-in-charge shall lay the application before the Court for orders as to the admission of the appeal.

39. After the admission of the appeal the transcript of the record will be prepared for transmission to England.

40. On the admission of an Appeal to His Majesty in Council, whether by the order of this Court under Order XLV, rule 8, Civil Procedure Code, or by an order of His Majesty in Council giving the appellant special leave to appeal, notice of such admission shall, at the cost of the appellant, be given by this Court to all the respondents, whether they have entered appearance or not; and the Registrar of this Court shall transmit to the Registrar of His Majesty's Privy Council, with the transcript record of the case, or as soon thereafter as practicable, a certificate that notice of such admission has been give to all the respondents.

41. After the despatch by this Court to the Privy Council of the transcript record in an appeal to His Majesty in Council, duly admitted by this Court, or by an order of His Majesty in Council giving special leave to appeal as aforesaid notice of such despatch shall, also at the cost of the appellant, be given by this Court to all the respondents, whether they have entered appearance or not, and the Registrar of this Court shall, as soon as practicable thereafter, transmit to the Registrar of His Majesty's Privy

Council a certificate that such notice has been given to all the respondents.

42. All applications by, or on behalf of, an infant, or a person of unsound mind, shall be made in the name of the infant or person of unsound mind by the person whose name is on the record as his next friend or guardian; and whenever any application is consented to, or opposed by, an infant or person of unsound mind, the infant or person of unsound mind shall in like manner be represented by the person who appears on the record as his next friend or guardian.

43. In case there is no next friend or guardian upon the record, a separate application for appointment of a next friend or guardian must be made.

44. The supplemental record dealing with substitution and representation of heirs of deceased parties shall be transmitted to England in manuscript instead of being printed.

45. (a) When a party, who has been successful in an appeal to His Majesty in Council, applies for a certificate of the costs incurred in the appeal in this Court, the Deputy Registrar shall, upon production of the order of His Majesty in Council for the payment of such costs, prepare such certificate and place it on the record of the Privy Council Appeal.

(b) A copy of the certificate will then be taken by the party in the usual way.

46. The Registrar shall periodically, and at short intervals, place in the Court's list all appeals which are in arrears and call on the appellants to show cause before the Court why the appeal should not be dismissed for want of prosecution.

APPENDIX I TO CHAPTER VI.

AT THE COURT AT BUCKINGHAM PALACE, THE
9TH DAY OF FEBRUARY, 1920.

Present:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by an Act passed in the 4th year of the reign of His Majesty King William IV, entitled "An Act for the better Administration of Justice in His Majesty's Privy Council," it is, amongst other things, enacted that it shall be lawful for His Majesty in Council from time to time to make any such Rules and Orders as may be thought fit for regulating the mode, form and time of Appeal to be made from the decisions of any Courts of Judicature in India (from the decisions of which an Appeal lies to His Majesty in Council), and in like manner from time to time to make such other Regulations for the preventing delays in the making or hearing such Appeals and as to the expenses attending the said Appeals and as to the amount or value of property in respect of which any such Appeal may be made:

AND WHEREAS Her Majesty Queen Victoria did by Her Order in Council of the 10th day of April, 1838, approve certain Rules and Orders for regulating the mode, form and time of Appeal from the decisions of the said Courts and also certain Regulations for the preventing delays in the making or hearing such Appeals and as to the expenses attending such Appeals and as to the amount or value of property in respect of which any such Appeal may be made.

AND WHEREAS the King's Most Excellent Majesty in Council hath deemed it expedient to rescind all the said Rules, Orders and Regulations and to substitute others in lieu thereof:

His Majesty is, therefore, pleased, by and with the advice of His Privy Council, to rescind all the said Rules, Orders and Regulations in the said Order in Council of the 10th day of April, 1838, contained, and to approve of the several Rules, Orders and Regulations contained in the Schedule hereto, and to order, as it is hereby ordered, that the same be respectively observed by all Courts of Judicature in India and by all persons whom it shall or may concern.

Whereof the Governor-General of India in Council, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

ALMERIC FITZROY.

The Schedule above referred to.

1. Applications to the Court for leave to appeal to His Majesty in Council shall be made within 90 days of the Decree or Order to be appealed from, subject to the provisions of sections 4, 5 and 12 of the Indian Limitation Act, 1908.

2. The preparation of the Record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

3. The Registrar, as well as the parties and their legal Agents, shall endeavour to exclude from the Record all documents (more particularly such as are merely formal), that are not relevant to the subject-matter of the Appeal, and, generally, to reduce the bulk of the Record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a manuscript list to be transmitted with the Record.

4. Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, and the Court allows the document to be included, the Record, as printed (whether in India or in England) shall, with a view to the subsequent adjustment of the costs of, and incidental to, such document, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

5. Where the Record is printed in India, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council 40 copies of such Record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal, if any, of the Court.

6. Where the Record is to be printed in England, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council one certified copy of such Record, together with an index of all the papers and exhibits in the case. No other certified copies of the Record shall be transmitted to the Agents in England by, or on behalf of, the parties to the Appeal.

7. Where there are two or more Appeals arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the Appeals should be consolidated, the Court may direct the Appeals to be consolidated.

8. An Appellant who has obtained a certificate for the admission of an Appeal may, at any time prior to the making of an Order admitting the Appeal, withdraw the Appeal on such terms as to costs and otherwise as the Court may direct.

9. Where an Appellant, having obtained a certificate for the admission of an Appeal, fails to furnish the security or make the deposit required (or apply with the due diligence to the Court for an Order admitting the Appeal), the Court may, on its own motion or on an application in that behalf made by the Respondent, cancel the certificate for the admission of the Appeal, and may give such directions as to the cost of the Appeal and the security entered into by the Appellant as the Court shall think fit, or make such further or other Order in the premises as, in the opinion of the Court, the justice of the case requires.

10. An Appellant whose appeal has been admitted shall prosecute his Appeal in accordance with the Rules for the time being regulating the general practice and procedure in Appeals to His Majesty in Council.

11. Where an Appellant, whose Appeal has been admitted, desires, prior to the despatch of the Record to England, to withdraw his Appeal, the Court may, upon an application in that behalf made by the Appellant, grant him a certificate to the effect that the Appeal has been withdrawn, and the Appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of His Majesty in Council, and the costs of the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

12. Where an Appellant, whose Appeal has been admitted, fails to show due diligence in taking all necessary steps in connection with the preparation of the Record, the Court may, either on its own motion or on the application of the Respondent, call upon the Appellant to show cause why a certificate should not be issued that the Appeal has not been effectually prosecuted by the Appellant, and if the Court sees fit to issue such a certificate, the Appeal shall be deemed, as

from the date of such certificate, to stand dismissed for non-prosecution without express Order of His Majesty in Council, and the costs of the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

13. Where at any time between the admission of an Appeal and the despatch of the record to England, the Record becomes defective by reason of the death, or change of status, of a party to the Appeal, the Court may, notwithstanding the admission of the Appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted, or entered, on the Record, in place of, or in addition to, the party who has died, or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the Record as aforesaid without express Order of His Majesty in Council. If, in the opinion of the Court, there has been undue delay in making this application, the Court may order the Appellant, or the party interested, to take all necessary steps to perfect the Record within such time as the Court may direct, and, if he fails to comply with such Order, the Court may call upon him to show cause why a certificate should not be issued that the Appeal has not been effectually prosecuted, and if the Court sees fit to issue such a certificate, the Appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of His Majesty in Council, and the costs of the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

14. When the Record subsequently to its despatch to England becomes defective by reason of the death, or change of status, of a party to the Appeal, the Court may, upon an application in that behalf made

by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council, showing who, in the opinion of the Court, is the proper person to be substituted, or entered, on the Record, in place of, or in addition to, the party who has died, or undergone a change of status. If in the opinion of the Court, there has been undue delay in making this application, the Court may order the Appellant, or the party interested, to take all necessary steps to perfect the Record within such time as the Court may direct, and, if he fails to comply with such order, the Court shall report the matter to the Registrar of the Privy Council.

15. These Rules shall come into operation on the 1st day of January, 1921, or on such other date as the Governor-General of India in Council may determine.

APPENDIX II TO CHAPTER VI.

AT THE COURT AT BUCKINGHAM PALACE,
THE 2ND DAY OF MAY, 1925.

Present:

THE KING'S MOST EXCELLENT MAJESTY.

Lord President .. Chancellor of the Duchy of
Lancaster.

Lord Chamberlain .. Sir George Lloyd.

WHEREAS there was this day read at the Board a representation from the Judicial Committee of the Privy Council in the words following, viz.:—

“The Lords of the Judicial Committee having taken into consideration the Practice and Procedure in accordance with which the general Appellate Jurisdiction of Your Majesty in Council is now exercised and being of opinion that the Rules regulating the said Practice and

Procedure ought to be amended, Their Lordships do hereby agree humbly to recommend to Your Majesty that with a view to such amendment certain Orders in Council regulating the said Practice and Procedure, viz., The Orders in Council dated respectively the 21st day of December, 1908, the 23rd day of May, 1916, the 25th day of March, 1920, the 9th day of March, 1921, and the 15th day of March, 1922, amending the said Practice and Procedure ought to be revoked as from the 1st day of January, 1926, and that the several Rules hereunto annexed ought to be substituted therefor and ought to come into operation on that date."

His Majesty having taken the said representation into consideration was pleased, by and with the advice of His Privy Council, to approve thereof and to order as it is hereby ordered, that the said Orders in Council in the said representation mentioned be and the same are hereby revoked as from the 1st day of January, 1926, and that the Rules hereunto annexed be substituted therefor to come into operation on that date.

Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY,

The following Order, dated the 2nd May 1925, issued by His Majesty in Council for observance in all appeals to the Privy Council, is inserted for information. It revokes and has been substituted for, the rules contained in the Orders in Council, dated, respectively, 21st December 1908; 23rd May, 1916; 25th March 1920; 9th March 1921; and 15th March 1922; which amended the above.

JUDICIAL COMMITTEE.

Jurisdiction and Procedure: General Rules as to Appeals.

THE JUDICIAL COMMITTEE RULES, 1925.

Statutory Rules and Orders, No. 440|L. 4 of 1925.

ARRANGEMENT OF RULES.

RULE.

1. Interpretation.

Leave to appeal.

2. Leave to appeal generally.

Special Leave to appeal.

3. Form of Petition for special leave to appeal.
4. Five copies of Petition to be lodged together with Affidavits in support.
5. Time for lodging Petition.
6. Security for costs and transmission of Record.
7. General provisions.
8. Petitions for special leave to appeal *in formâ pauperis*.
9. Exemption of pauper Appellant from lodging security and paying Office fees.
10. Exemption of unsuccessful Petitioner for leave to appeal *in formâ pauperis* from payment of Office fees.

Record and Appearance by Appellant.

11. Record to be transmitted without delay.
12. Printing of Record.
13. Number of copies to be transmitted, where Record printed abroad.
14. One certified copy to be transmitted, where Record to be printed in England.
15. Record printed partly abroad, partly in England.

16. Reasons for judgments to be included.
17. Exclusion of unnecessary documents from Record.
18. Documents objected to, to be indicated.
19. Registration and numbering of Records.
20. Inspection of Record by parties.
21. Appearance by Appellant.
22. Times within which a copy of a written Record shall be bespoken.
23. Preparation of copy of Record for Printer.
24. Lodging copy of Record for printing.
25. Special Case.
26. Examination of proof of Record and striking off copies.
27. Number of copies of Record for parties.
28. How costs of printing Record are to be borne.

Petition of Appeal.

29. Times within which Petition shall be lodged.
30. Form of Petition.
31. Service of Petition.

Withdrawal of Appeal.

32. Withdrawal of Appeal before Petition of Appeal has been lodged.
33. Withdrawal of Appeal after Petition of Appeal has been lodged.

Non-prosecution of Appeal.

34. Dismissal of Appeal where Appellant takes no step in Prosecution thereof.
35. Dismissal of Appeal for non-prosecution after Appellant's appearance and before lodgment of Petition of Appeal.
36. Dismissal of Appeal for non-prosecution after lodgment of Petition of Appeal.
37. Restoring an Appeal dismissed for non-prosecution.

Appearance by Respondent.

- 38. Time within which Respondent may appear.
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Interpretation.

1. (1) In these Rules, unless the context otherwise requires:—

“Appeal” means an Appeal to His Majesty in Council;

“Judgment” includes decree, order, sentence, or decision of any Court, Judge, or Judicial Officer;

“Record” means the aggregate of papers relating to an Appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before His Majesty in Council on the hearing of the Appeal;

“Registrar” means the Registrar or other proper officer having the custody of the records in the Court appealed from;

“Abroad” means the country or place where the Court appealed from is situate;

"Agent" means a person qualified by virtue of Her late Majesty's Order in Council of the 6th March 1896 to conduct proceedings before His Majesty in Council on behalf of another;

"Party" and all words descriptive of parties to proceedings before His Majesty in Council (such as "Petitioner," "Appellant," "Respondent") mean, in respect of all acts proper to be done by an Agent, the Agent of the Party in question where such party is represented by an Agent;

"Respondent" includes Intervener;

"Month" means calendar month;

Words in the singular shall include the plural, and words in the plural shall include the singular.

(2) Where by these rules any step is required to be taken in England in connection with proceedings before His Majesty in Council, whether in the way of lodging a Petition or other document, entering an Appearance, lodging security, or otherwise, such step shall be taken in the Registry of the Privy Council, Downing Street, London.

Leave to Appeal.

2. All Appeals shall be brought either in pursuance of leave obtained from the Court appealed from, or, in the absence of such leave, in pursuance of special leave to appeal granted by His Majesty in Council upon a Petition in that behalf presented by the intending Appellant.

Special Leave to Appeal.

3. A Petition for special leave to appeal to His Majesty in Council shall state succinctly and clearly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise His Majesty whether such leave ought to be granted, and shall be signed by the counsel who attends at the hearing or

by the party himself if he appears in person. The petition shall deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which special leave to appeal is sought.

4. The Petitioner shall lodge at least five copies of his Petition for special leave to appeal together with the Affidavit in support thereof prescribed by Rule 50 hereinafter contained, and, unless a Caveat as prescribed by Rule 48 has been lodged by the other parties who appeared in the Court below, an Affidavit of service of notice of the intended application upon such parties or their Solicitors or Agents, either abroad or in England.

5. A Petition for special leave to appeal may be lodged at any time after the date of the judgment sought to be appealed from, but the Petitioner shall, in every case, lodge his Petition with the least possible delay.

6. Where the Judicial Committee agree to advise His Majesty to grant special leave to appeal, they shall, in their Report, specify the amount of the security for costs (if any) to be lodged by the Petitioner, and shall, unless the circumstances of a particular case render such a course unnecessary, provide for the transmission of the record by the Registrar to the Registrar of the Privy Council and for such further matters as the justice of the case may require. Unless otherwise ordered the security shall be lodged at any time before the Appellant enters an Appearance.

7. Save as by the four last preceding Rules otherwise provided, the provisions of Rules 47 to 50 and 52 to 59 (all inclusive) hereinafter contained shall apply *mutatis mutandis* to Petitions for special leave to appeal.

8. Rules 3 to 7 (both inclusive) shall apply *mutatis mutandis* to Petitions for leave to appeal in

formâ pauperis, but in addition to the Affidavits referred to in rule 4 every such petition shall be accompanied by an Affidavit from the Petitioner stating that he is not worth £25 in the world excepting his wearing apparel and his interest in the subject-matter of the intended Appeal, and that he is unable to provide sureties, and also by a certificate of Counsel that the Petitioner has reasonable ground of appeal.

9. Where a Petitioner obtains leave to appeal in *formâ pauperis*, he shall not be required to lodge security for the costs of the Respondent or to pay any Council Office fees.

10. A Petitioner whose petition for leave to appeal in *formâ pauperis* is dismissed may, notwithstanding such dismissal, be excused from paying the Council Office fees usually chargeable to a Petitioner in respect of a Petition for leave to appeal, if His Majesty in Council, on the advice of the Judicial Committee, shall think fit so to order.

Record and Appearance by Appellant.

11. As soon as the Appeal has been admitted, whether by an Order of the Court appealed from or by an Order of His Majesty in Council granting special leave to appeal, the Appellant shall without delay take all necessary steps to have the Record transmitted to the Registrar of the Privy Council, and the Registrar shall, with all convenient speed, certify to the Registrar of the Privy Council that the Respondent has received notice, or is otherwise aware, of the Order of the Court appealed from admitting the Appeal, or of the Order of His Majesty in Council giving the Appellant special leave to appeal, and has also received notice, or is otherwise aware, of the despatch of the Record to England. Where an Appellant who has obtained special leave to appeal by an Order of His Majesty in Council fails to have the Record transmitted to the Registrar of the Privy Council with the diligence, the Registrar of the Privy

Council shall call upon the the Appellant to explain his default, and if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar insufficient, the said Registrar may issue a Summons to the Appellant calling upon him to show cause before the Judicial Committee at a time to be named in the Summons why the special leave to appeal granted should not be rescinded. The Respondent shall be entitled to be heard before the Judicial Committee in the matter of the said Summons and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said Summons, recommend to His Majesty to rescind the grant of special leave to appeal or give such other directions therein as the justice of the case may require.

12. The Record shall be printed in accordance with the Rules contained in Schedule A hereto. It may be printed either abroad or in England. When printed abroad the parties in England shall, upon perusal, consider whether the order of the documents is in accordance with these Rules, and if it is not, they shall agree upon the proper order. The Appellant shall then rearrange copies of the Record for the use of the Judicial Committee and the other parties. In the event of the parties being unable to agree, the matter shall be referred to the Registrar of the Privy Council who, if he thinks fit, may require the parties to attend before the Judicial Committee for directions.

13. Where the Record is printed abroad, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council 40 copies of such Record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal, if any, of the Court appealed from.

14. Where the Record is to be printed in England, the Registrar shall, at the expense of the

Appellant, transmit to the Registrar of the Privy Council one certified copy of such Record, together with an index of all the papers and exhibits in the case. No other certified copies of the Record shall be transmitted to the Agents in England by or on behalf of the parties to the Appeal.

15. Where part of the Record is printed abroad and part is to be printed in England, Rules 13 and 14 shall, as far as practicable, apply to such parts as are printed abroad and such as are to be printed in England respectively.

16. The reasons given by the Judge, or any of the Judges, for or against any judgment pronounced in the course of the proceedings out of which the Appeal arises, shall by such Judge or Judges be communicated in writing to the Registrar and shall be included in the Record.

17. The Registrar, as well as the parties and their Agents, shall endeavour to exclude from the Record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the Appeal, and, generally, to reduce the bulk of the Record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be printed or copied shall be enumerated in a type-written list to be transmitted with the Record.

18. Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the Record, as finally printed (whether abroad or in England), shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

19. As soon as the Record is received in the Registry of the Privy Council, it shall be registered in the said Registry, with the date of arrival, the names of the parties, and the description whether "printed" or "written". A Record, or any part of a Record, not printed in accordance with the rules contained in Schedule A hereto shall be treated as written. Appeals shall be numbered consecutively in each year in the order in which the Records are received in the said Registry.

20. The parties shall be entitled to inspect the Record and to extract all necessary particulars therefrom for the purpose of entering an Appearance.

21. The Appellant shall enter an Appearance before taking any steps in the prosecution of the Appeal, and after entering such Appearance, shall forthwith give notice thereof to the Respondent, if the latter has entered an Appearance.

22. Where the Record arrives in England either wholly written, or partly written and partly printed, the Appellant shall, within a period of four months from the date of such arrival in the case of Appeals from Courts situate in any of the countries or places named in Schedule B hereto, and within a period of two months from the same date in the case of Appeals from any other Courts, enter an Appearance and bespeak a type-written copy of the Record, or such parts thereof as it may be necessary to have copied, and shall engage to pay the cost of preparing such copy at the following rates per folio typed (exclusive of tabular matter)—*2d.* per folio of England matter, *2½d.* per folio of Indian matter, and *3½d.* per folio of foreign matter; and shall also engage to pay at such price as shall be fixed by the Registrar of the Privy Council the cost of printing at least 50 copies thereof.

23. As soon as the Appellant has obtained the type-written copy of the Record bespoken by him, he

shall proceed, with due diligence, to arrange the documents in suitable order, to check the index, to insert the marginal notes and check the same with the index, and generally, to do whatever may be, required for the purpose of preparing the copy for the printer in accordance with the Rules contained in Schedule A hereto, and shall, if the Respondent has entered an Appearance, submit the copy, as prepared for the Printer, to the Respondent for his approval. In the event of the parties being unable to agree, the matter shall be referred to the Registrar of the Privy Council who, if he thinks fit, may require the parties to attend before Judicial Committee for directions.

24. As soon as the type-written copy of the Record is ready for the printer, the Appellant shall lodge it in the Registry of the Privy Council for printing by a printer selected by the Registrar of the Privy Council, and at the same time shall lodge the amount of the estimated cost of printing the Record.

25. Whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the parties, with the sanction of the Registrar of the Privy Council, may submit question of law to the Judicial Committee in the form of a Special Case, and print such parts only of the Record as may be necessary for the discussion of the same: Provided that nothing herein contained shall in any way prevent the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit, and that, in order to promote such arrangements and simplification of the matter in dispute, the said Registrar may call the parties before him, and having heard them, and examined the Record, may report to the Judicial Committee as to the nature of the proceedings.

26. The Registrar of the Privy Council shall, as soon as the proof prints of the Record are ready, give notice to all parties who have entered an Appearance requesting them to attend at the Registry of the Privy

Council at a time to be named in such notice in order to examine the said proof prints and compare the same with the certified Record, and shall, for that purpose, furnish each of the said parties with one proof print. After the examination has been completed, the Appellant shall, without delay, lodge his proof print, duly corrected and (so far as necessary) approved by the Respondent, and the Registrar of the Privy Council shall thereupon cause the copies of the Record to be struck off from such proof print.

27. Each party who has entered an Appearance shall be entitled to receive, for his own use, six copies of the Record.

28. Subject to any special direction from the Judicial Committee to the contrary, the costs of, and incidental to, the printing of the Record shall form part of the costs of the Appeal, but the costs of, and incidental to, the printing of any document objected to by one party, in accordance with Rule 18, shall, if such document is found on the taxation of costs to be unnecessary or irrelevant, be disallowed to, or borne by, the party insisting on including the same in the Record.

Petition of Appeal.

29. The Appellant shall lodge his Petition of Appeal—

- (a) Where the Record arrives in England printed, within a period of four months from the date of such arrival in the case of Appeals from Courts situate in any of the countries or places named in Schedule B hereto, and within a period of two months from the same date in the case of Appeal from any other Courts;
- (b) Where the Record arrives in England written, within a period of one month from, but not before, the date of the completion of the printing thereof:

Provided that nothing in this Rule contained shall preclude the Appellant from lodging his Petition of Appeal prior to the arrival of the Record, or the completion of the printing thereof, if there are special reasons why, in the opinion of the Registrar of the Privy Council, it should be desirable for him to do so.

30. The Petition of Appeal shall be lodged in the form prescribed by Rule 47 hereinafter contained. It shall recite succinctly and, as far as possible, in chronological order, the principal steps in the proceedings leading up to the Appeal from the commencement thereof down to the admission of the Appeal, but shall not contain argumentative matter or travel into the merits of the case.

31. The Appellant shall, after lodging his Petition of Appeal, serve a copy thereof without delay on the Respondent, as soon as the latter has entered an Appearance, and shall endorse such copy with the date of the lodgment.

Withdrawal of Appeal.

32. Where an Appellant, who has not lodged his Petition of Appeal, desires to withdraw his Appeal, he shall give notice in writing to that effect to the Registrar of the Privy Council, and the said Registrar shall, with all convenient speed after the receipt of such notice, by letter notify the Registrar of the Court appealed from that the Appeal has been withdrawn, and the said Appeal shall thereupon stand dismissed as from the date of the said letter without further Order.

33. Where an Appellant, who has lodged his Petition of Appeal, desires to withdraw his Appeal, he shall present a Petition to that effect to His Majesty in Council. On the hearing of any such Petition a Respondent who has entered an Appearance in the Appeal shall, subject to any agreement between him and the Appellant to the contrary, be entitled to apply to the Judicial Committee for his costs, but where

the Respondent has not entered an Appearance, or, having entered an Appearance, consents in writing to the prayer of the Petition, the Petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a Consent Petition under the provisions of Rule 56 hereinafter contained.

Non-prosecution of Appeal.

34. Where an Appellant takes no step in prosecution of his Appeal within a period of four months from the date of the arrival of the Record in England in the case of an Appeal from a Court situate in any of the countries or places named in Schedule B hereto, or within a period of two months from the same date in the case of an Appeal from any other Court, the Registrar of the Privy Council shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been prosecuted, and the Appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to any Respondent who has entered an Appearance in the Appeal.

35. Where an Appellant who has entered an Appearance—

- (a) fails to bespeak a copy of a written Record, or of part of a written Record, in accordance with, and within the periods prescribed by rule 22; or
- (b) having bespoken such copy within the periods prescribed by rule 22, fails thereafter to proceed with due diligence to take all such further steps as may be necessary for the purpose of completing the printing of the said record; or
- (c) fails to lodge his Petition of Appeal within the periods respectively prescribed by Rule 29;

the Registrar of the Privy Council shall call upon the Appellant to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been effectually prosecuted, and the Appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to all the parties who have entered an Appearance in the Appeal.

36. Where an Appellant, who has lodged his Petition of Appeal, fails thereafter to prosecute his Appeal with due diligence, the Registrar of the Privy Council shall call upon him to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar shall issue a Summons to the Appellant calling upon him to show cause before the Judicial Committee at a time to be named in the said Summons why the Appeal should not be dismissed for non-prosecution: Provided that no such Summons shall be issued by the said Registrar before the expiration of one year from the date of the arrival of the Record in England. If the respondent has entered an Appearance in the Appeal, the Registrar of the Privy Council shall send him a copy of the said Summons, and the Respondent shall be entitled to be heard before the Judicial Committee in the matter of the said Summons at the time named and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said Summons, recommend to His Majesty the dismissal of the Appeal for non-prosecution, or give such other directions therein as the justice of the case may require.

37. An Appellant whose Appeal has been dis-

missed for non-prosecution may present a Petition to His Majesty in Council praying that his Appeal may be restored.

Appearance by Respondent.

38. The Respondent may enter an Appearance at any time between the arrival of the Record and the hearing of the appeal, but if he unduly delays entering an Appearance he shall bear, or be disallowed, the costs occasioned by such delay, unless the Judicial Committee otherwise direct.

39. The Respondent shall forthwith after entering an Appearance give notice thereof to the Appellant, if the latter has entered an Appearance.

40. Where there are two or more Respondents, and only one, or some, of them enter an Appearance, the Appearance Form shall set out the names of the appearing Respondents.

41. Two or more Respondents may, at their own risk as to costs, enter separate Appearances, in the same Appeal.

42. A Respondent who has not entered an Appearance shall not be entitled to receive any notices relating to the Appeal from the Registrar of the Privy Council, nor be allowed to lodge a Case in the Appeal.

43. Where a Respondent fails to enter an Appearance in an Appeal, the following Rules shall, subject to any special Order of the Judicial Committee to the contrary, apply:—

(a) If the non-appearing Respondent was a Respondent at the time when the Appeal was admitted, whether by the Order of the Court appealed from or by an Order of His Majesty in Council giving the Appellant special leave to appeal, and it appears from the terms of the said Order, or Order in Council, or otherwise from the Record, or from a Certificate of the Registrar of the Court appealed from, that the

said non-appearing Respondent has received notice, or was otherwise aware, of the Order of the Court appealed from admitting the Appeal, or of the Order of His Majesty in Council giving the Appellant special leave to appeal, and has also received notice or was otherwise aware, of the despatch of the Record to England, the Appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date of the lodging of the Petition of Appeal;

(b) If the non-appearing Respondent was made a Respondent by an Order of His Majesty in Council subsequently to the admission of the Appeal, and it appears from the Record, or from a Supplementary Record, or from a Certificate of the Registrar of the Court appealed from, that the said non-appearing Respondent has received notice, or was otherwise aware, of any intended application to bring him on the Record as a Respondent, the Appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date on which he shall have been served with a copy of His Majesty's Order in Council bringing him on the Record as a Respondent:

Provided that where it is shown to the satisfaction of the Registrar of the Privy Council, by Affidavit or otherwise, either that an Appellant has made every reasonable endeavour to serve a non-appearing Respondent with the notices mentioned in clauses (a) and (b) respectively and has failed to effect such service, or that it is not the intention of the non-appearing Respondent to enter an Appearance to the Appeal, the Appeal may, without further Order in that behalf and at the risk of the Appellant, be proceeded with *ex parte* as against the said non-appearing Respondent.

44. A Respondent who desires to defend an appeal in *forma pauperis* may present a Petition to

that effect to His Majesty in Council, which Petition shall be accompanied by an Affidavit from the Petitioner stating that he is not worth £25 in the world excepting his wearing apparel and has interest in the subject-matter of the Appeal.

Petitions generally.

45. All Petitions for orders or directions as to matters of practice or procedure arising after the lodging of the Petition of Appeal and not involving any change in the parties to an Appeal shall be addressed to the Judicial Committee. All other Petitions shall be addressed to His Majesty in Council, but a Petition which is properly addressed to His Majesty in Council may include, as incidental to the relief thereby sought, a prayer for orders or directions as to matters of practice or procedure.

46. Where an Order made by the Judicial Committee does not embody any special terms or include any special directions, it shall not be necessary to draw up such Order, unless the Committee otherwise direct, but a Note thereof shall be made by the Registrar of the Privy Council.

47. All Petitions shall consist of paragraphs numbered consecutively and shall be written, typewritten, or lithographed, on brief paper with quarter margin and endorsed with the name of the Court appealed from, the full title and Privy Council number of the Appeal to which the Petition relates or the full title of the Petition (as the case may be), and the name and address of the London Agent (if any) of the Petitioner, but need not be signed, except as provided by Rule 3. Unless the Petition is a Consent Petition within the meaning of Rule 56 at least five copies thereof shall be lodged.

48. Where a Petition is expected to be lodged, or has been lodged, which does not relate to any pending Appeal of which the Record has been registered in the Registry of the Privy Council, any person

claiming a right to appear before the Judicial Committee on the hearing of such Petition may lodge a Caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar of the Privy Council notice of the lodging of the Petition, if at the time of the lodging of the Caveat such Petition has not yet been lodged, and, if and when the Petition has been lodged, to require the Petitioner to serve him with a copy of the Petition, and to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of his Petition. The Caveator shall forthwith after lodging his Caveat give notice thereof to the Petitioner if the Petition has been lodged.

49. Where a Petition is lodged in the matter of any pending Appeal of which the Record has been registered in the Registry of the Privy Council, the Petitioner shall serve any party who has entered an Appearance in the Appeal with a copy of such Petition, and the party so served shall thereupon be entitled to require the Petitioner to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of his Petition.

50. A Petition not relating to any Appeal of which the Record has been registered in the Registry of the Privy Council, and any other Petition containing allegations of fact which cannot be verified by reference to the registered Record or any certificate or duly authenticated statement of the Court appealed from, shall be supported by Affidavit. Where the Petitioner prosecutes his Petition in person, the said Affidavit shall be sworn by the Petitioner himself and shall state that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the Petition are true. Where the Petitioner is represented by an Agent, the said Affidavit shall be sworn by such Agent and shall, besides stating that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the Petition are

true, show how the deponent obtained his instructions and the information enabling him to present the Petition.

51. A Petition for an Order of Revivor or Substitution shall be accompanied by a certificate or duly authenticated statement from the Court appealed from showing who, in the opinion of the said Court, is the proper person to be substituted, or entered on the Record in place of, or in addition to, a party who has died or undergone a change of status.

52. The Registrar of the Privy Council may refuse to receive a Petition on the grounds that it discloses no reasonable cause of appeal, or is frivolous, or contains scandalous matter, but the Petitioner may appeal, by way of motion, from such refusal of the Judicial Committee.

53. As soon as a Petition and all necessary documents are lodged the Petition shall thereupon be deemed to be set down.

54. On each day appointed by the Judicial Committee for the hearing of Petitions the Registrar of the Privy Council shall, unless the Committee otherwise direct, put in the paper for hearing all such Petitions as have been set down: Provided that, in the absence of special circumstances of urgency to be shown to the satisfaction of the said Registrar, no Petition, if opposed, shall be put in the paper for hearing before the expiration of ten clear days from the lodging thereof, unless the Opponent consents to the Petition being put in the paper on an earlier day.

55. Subject to the provisions of the next following Rule, the Registrar of the Privy Council shall, as soon as the Judicial Committee have appointed a day for the hearing of a Petition, notify all parties concerned by Summons of the day so appointed.

56. Where the prayer of a Petition is consented to in writing by the opposite party, or where a Peti-

tion is of a formal and non-contentious character, the Judicial Committee may, if they think fit, make their Report to His Majesty on such Petition, or make their Order thereon, as the case may be, without requiring the attendance of the parties in the Council Chamber, and the Registrar of the Privy Council shall not in any such case issue the Summons provided for by the last preceding Rule, but shall with all convenient speed after the Committee have made their Report or Order notify the parties that the Report or Order has been made and of the date and nature of such Report or Order.

57. A Petitioner who desires to withdraw his Petition shall give notice in writing to that effect to the Registrar of the Privy Council. Where the Petition is opposed, the Opponent shall, subject to any agreement between the parties to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the Petition is unopposed, or where, in the case of an opposed Petition, the parties have come to an agreement as to the costs of the Petition, the Petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a Consent Petition under the provisions of the last preceding Rule.

58. Where a Petitioner unduly delays bringing a Petition to a hearing, the Registrar of the Privy Council shall call upon him to explain the delay, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar may, after notifying all parties interested by Summons of his intention to do so, put the Petition in the paper for hearing on the next following day appointed by the Judicial Committee for the hearing of Petitions for such directions as the Committee may think fit to give thereon.

59. At the hearing of a Petition not more than one Counsel shall be admitted to be heard on a side.

Case.

60. No party to an Appeal shall be entitled to be heard by the Judicial Committee unless he has previously lodged his Case in the Appeal: Provided that where a Respondent, who has entered an appearance, does not desire to lodge a Case in the Appeal, he may give the Registrar of the Privy Council notice in writing of his intention not to lodge any Case, while reserving his right to address the Judicial Committee on the question of costs.

61. The Case may be printed either abroad or in England, and shall, in either event, be printed in accordance with Rules I to III contained in Schedule A hereto, every tenth line thereof being numbered in the margin, and shall be signed by at least one of the Counsel who attends at the hearing of the Appeal or by the party himself if he conducts his Appeal in person.

62. Each party shall lodge 30 prints of his Case.

63. The Case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the Appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. References by page and line to the relevant portions of the Record as printed shall, as far as practicable, be printed in the margin, and care shall be taken to avoid, as far as possible, the reprinting in the Case of long extracts from the Record. The Taxing Officer, in taxing the costs of the Appeal, shall, either of his own motion, or at the instance of the opposite party, inquire into any unnecessary prolixity in the Case, and shall disallow the costs occasioned thereby.

64. Two or more Respondents may, at their own risk as to costs, lodge separate Cases in the same Appeal.

65. Each party shall, after lodging his Case, forthwith give notice thereof to the other party.

66. Subject as hereinafter provided, the party who lodges his Case first may, at any time after the expiration of three clear days from the day on which he has given the other party the notice prescribed by the last preceding Rule, serve such other party, if the latter has not in the meantime lodged his Case, with a "Case Notice," requiring him to lodge his Case within one month from the date of the service of the said Case Notice and informing him that, in default of his so doing, the Appeal will be set down for hearing *ex parte* as against him, and if the other party fails to comply with the said Case Notice, the party who has lodged his Case may, at any time after the expiration of the time limited by the said Case Notice for the lodging of the Case, lodge an Affidavit of Service (which shall set out the terms of the said Case Notice), and the Appeal shall thereupon, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the party in default: Provided that no Case Notice shall be served until after the completion of the printing, or re-arrangement under Rule 12, of the Record, and also that nothing in this Rule contained shall preclude the party in default from lodging his Case, at his own risk as regards costs and otherwise, at any time up to the date of hearing.

67. Subject to the provisions of Rule 43 and of the last preceding Rule, an Appeal shall be set down *ipso facto* as soon as the Cases on both sides are lodged, and the parties shall thereupon exchange Cases by handing one another, either at the Offices of one of the Agents or in the Registry of the Privy Council, ten copies of their respective Cases.

Binding Records, etc.

68. As soon as an Appeal is set down, the Appellant shall attend at the Registry of the Privy Council and obtain ten copies of the Record and Cases to be bound for the use of the Judicial Committee at the hearing. The copies shall be bound in cloth or in

half leather with paper sides, and six leaves of blank paper shall be inserted before the Appellant's Case. The front cover shall bear a printed label stating the title and Privy Council number of the Appeal, the contents of the volume, and the names and addresses of the London Agents. The several documents, indicated by incuts, shall be arranged in the following order: (1) Appellant's Case; (2) Respondent's Case; (3) Record (if in more than one part, showing the separate parts by incuts, all parts being paged at the top of the page); (4) Supplemental Record (if any); and the short title and Privy Council number of the Appeal shall also be shown on the back.

69. The Appellant shall lodge the bound copies not less than four clear days before the commencement of the Sittings during which the Appeal is to be heard.

Hearing.

70. The Registrar of the Privy Council shall name a day on or before which Appeals must be set down if they are to be entered in the List of Business for the ensuing Sittings. All Appeals set down on or before the day named shall, subject to any directions from the Committee or to any agreement between the parties to the contrary, be entered in such List of Business and shall, subject to any directions from the Committee to the contrary, be heard in the order in which they are set down.

71. The Registrar of the Privy Council shall, subject to the provisions of Rule 42, notify the parties to each Appeal by Summons, at the earliest possible date, of the day appointed by the Judicial Committee for the hearing of the Appeal, and the parties shall be in readiness to be heard on the day so appointed.

72. At the hearing of an Appeal not more than two Counsel shall be admitted to be heard on a side.

73. In Admiralty Appeals the Judicial Committee may, if they think fit, require the attendance of two Nautical Assessors.

Judgment.

74. Where the Judicial Committee, after hearing an Appeal, decide to reserve their Judgment thereon, the Registrar of the Privy Council shall in due course notify the parties by Summons of the day appointed by the Committee for the delivery of the judgment.

Costs.

75. All Bills of Costs under the Orders of the Judicial Committee on Appeals, Petitions, and other matters, shall be referred to the Registrar of the Privy Council, or such other person as the Judicial Committee may appoint, for taxation, and all such taxations shall be regulated by the Schedule of Fees set forth in Schedule C hereto.

76. The taxation of costs in England shall be limited to costs incurred in England.

77. The Registrar of the Privy Council shall, with all convenient speed after the Judicial Committee have given their decision as to the costs of an Appeal, Petition, or other matter, issue to the party to whom costs have been awarded an Order to tax and a Notice specifying the day and hour appointed by him for taxation. The party receiving such Order to tax and Notice shall, not less than 48 hours before the time appointed for taxation, lodge his Bill of Costs (together with all necessary vouchers for disbursements), and serve the opposite party with a copy of his Bill of Costs and of the Order to tax and Notice.

78. The Taxing Officer may, if he think fit, disallow to any party who fails to lodge his Bill of Costs (together with all necessary vouchers for disbursements) within the time prescribed by the last preceding Rule, or who in any way delays or impedes a taxation, the charges to which such party would otherwise be entitled for drawing his Bill of Costs and attending the taxation.

79. Any party aggrieved by a taxation may appeal from the decision of the Taxing Officer to the Judicial Committee. The Appeal shall be heard by way of motion, and the party appealing shall give three clear days Notice of Motion to the opposite party, and shall also leave a copy of such Notice in the Registry of the Privy Council.

80. The amount allowed by the Taxing Officer on the taxation shall, subject to any appeal from his taxation to the Judicial Committee and subject to any direction from the Committee to the contrary, be inserted, in His Majesty's Order in Council determining the Appeal or Petition.

81. Where the Judicial Committee directs costs to be taxed on the pauper scale, the Taxing Officer shall not allow any fees of Counsel, and shall only award to the Agents out-of-pocket expenses and a reasonable allowance to cover office expenses, such allowance to be taken at about three-eighths of the usual professional charges in ordinary Appeals. Such pauper scale shall apply to and include the application upon which leave to appeal in *forma pauperis* was granted.

82. Where the Appellant has lodged security for the Respondent's costs of an Appeal in the Registry of the Privy Council, the Registrar of the Privy Council shall deal with such security in accordance with the directions contained in His Majesty's Order in Council determining the Appeal.

Miscellaneous.

83. The Judicial Committee may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matters of practice and procedure as they shall consider just and expedient. Applications to be excused for compliance with the requirements of any of these Rules shall be addressed in the first instance to the Registrar of the Privy

Council, who shall take the instructions of the Committee thereon and communicate the same to the parties. If, in the opinion of the said Registrar, it is desirable that the application should be dealt with by the Committee in open Court, he may direct the party applying to lodge in the Registry of the Privy Council, and to serve the opposite party with, a Notice of Motion returnable before the Committee.

84. Any document lodged in connection with an Appeal, Petition, or other matter pending before His Majesty in Council or the Judicial Committee, may be amended by leave of the Registrar of the Privy Council, but if the said Registrar is of opinion that an application for leave to amend should be dealt with by the Committee in open Court, he may direct the party applying to lodge in the Registry of the Privy Council, and to serve the opposite party with, a Notice of Motion returnable before the Committee.

85. Affidavits relating to any Appeal, Petition or other matter pending before His Majesty in Council or the Judicial Committee may be sworn before the Registrar of the Privy Council.

86. Where a party to an Appeal, Petition, or other matter pending before His Majesty in Council changes his Agent, such party, or the new Agent, shall forthwith give the Registrar of the Privy Council and the outgoing Agent notice in writing of the change, and shall amend the Appearance accordingly. Until such notices are given the former Agent shall be considered the Agent of the party until the final conclusion of the Appeal, Petition, or other matter.

87. Subject to the provision of any Statute or of any Statutory Rules or Order to the contrary, these rules shall apply to all matters falling within the Appellate Jurisdiction of His Majesty in Council.

88. These Rules may be cited as the Judicial Committee Rules, 1925, and they shall come into operation on the 1st day of January, 1926.

SCHEDULE A.

Rules as to Printing.

I. All Records and other proceedings in Appeals or other matters pending before His Majesty in Council or the Judicial Committee which are required by the above Rules to be printed shall be printed in the form known as Demy Quarto.

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and $8\frac{1}{2}$ inches in width.

III. The type to be used in the text shall be Pica type, but Long Primer shall be used in printing accounts, tabular matter and notes. The number of lines in each page of Pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

IV. Records shall be arranged in two parts in the same volume, where practicable, *viz.*—

Part I.—The pleading and proceedings, the transcript of the evidence of the witnesses, the Judgments, Decrees, etc., of the Courts below, down to the Order admitting the Appeal.

Part II.—The exhibits and documents.

V. The Index to Part I shall be in chronological order, and shall be placed at the beginning of the volume.

The Index to Part II shall follow the order of the exhibit mark, and shall be placed immediately after the Index to Part I.

VI. Part I shall be arranged strictly in chronological order, *i.e.*, in the same order as the index.

Part II shall be arranged in the most convenient way for the use of the Judicial Committee, as the circumstances of the case require. The documents shall be printed as far as suitable in chronological order, mixing Plaintiff's and Defendant's documents together when necessary. Each document shall show its exhibit mark, and whether it is a Plaintiff's or Defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter, such as—

(a) a series of correspondence, or

(b) proceedings in a suit other than the one under appeal,

shall be kept together. The order in the Record of the documents in Part II will probably be different from the order

of the Index, and the proper page number of each document shall be inserted in the printed Index.

The parties will be responsible for arranging the Record in proper order for the Judicial Committee, and in difficult cases Counsel may be asked to settle it.

VII. The documents in Part I shall be numbered consecutively.

The documents in Part II shall not be numbered, apart from the exhibit mark.

VIII. Each document shall have a heading which shall of the number or exhibit mark and the description of the document in the Index, without the date.

IX. Each document shall have a marginal note which shall be repeated on each page over which the document extends, viz. :—

Part I.

(a) Where the case has been before more than one Court, the short name of the Court shall first appear. Where the case has been before only one Court, the name of the Court need not appear.

(b) The marginal note of the document shall then appear consisting of the number and the description of the documents in the Index, with the date, except in the case of oral evidence.

(c) In the case of the oral evidence, "Plaintiff's evidence" or "Defendant's evidence" shall appear beneath the name of the Court, and then the marginal note consisting of the number in the Index and the witness's name, with "Examination" "cross-examination" or "re-examination," as the case may be.

Part II.

The word "Exhibits" shall first appear.

The marginal note of the exhibit shall then appear consisting of the exhibit mark and the description of the document in the Index with the date.

X. The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the Index and in the Record), if desired, with the words "not printed" against it.

A long series of documents, such as accounts, rent rolls, inventories, etc., shall not be printed in full, unless Counsel so advise, but the parties shall agree to short extracts being printed as specimens.

XI. In cases where maps sent from abroad are of an inconvenient size or unsuitable in character, the Appellant shall, in agreement with the Respondent, prepare in England, from the materials sent from abroad, maps drawn properly to scale and of reasonable size, showing, as far as possible, the claims of the respective parties, in different colours.

SCHEDULE B.

Countries and places referred to in Rules 22, 29 and 34.

Australia.	Fiji.
British Honduras.	Hong Kong.
British North Borneo.	India.
Brunei.	Mauritius.
Ceylon.	New Zealand.
China.	Persia.
Eastern African Dependencies.	Seychelles.
Falkland Islands.	Somaliland Protectorate.
Federated Malay States.	Straits Settlements.

SCHEDULE C.

Fees allowed to Agents conducting Appeals or other matters before the Judicial Committee of the Privy Council.

(33 $\frac{1}{3}$ per cent. is added to these fees.)

	£.	s.	d.
Retainer fee	0	13	4
Drawing Appearance or Caveat	0	5	0
Perusing Printed Record, for every printed sheet of 8 pages	1	1	0
Perusing written Record, for every 25 folios	0	6	8
Drawing Index, <i>per folio</i>	0	2	0
Drawing Marginal Notes and Headings, <i>per folio</i>	0	0	6
Attending at the Registry to examine proof print of Record with the certified Record, <i>per day</i>	3	3	0
Attending at the Registry to examine proof of Record with the certified Record, <i>per half day</i>	1	11	6
Correcting revised print of Record, per sheet of 8 pages—			
Foreign or Indian cases	1	1	0
Other cases	0	10	6
Instruction for Petition or Motion, or to Oppose	0	10	0
Instructions for Petition of Appeal	0	10	0
Instructions for Case	1	0	0

	£.	s.	d.
Drawing Petition, Motion, Case or Affidavit, <i>per folio</i>	0	2	0
Copying Petition, Motion, Case or Affidavit, <i>per folio</i>	0	0	6
Correcting proof of Case, per sheet of 8 pages—			
Foreign or Indian Cases	1	1	0
Other Cases	0	10	6
Drawing and fair copy Case Notice	0	10	0
Perusing Petition, Motion or Affidavit, <i>per folio</i>	0	2	0
Perusing Petition of Appeal	1	1	0
Perusing Case, per printed sheet of 8 pages	1	1	0
Instructions for and preparing Retainer to Counsel	0	10	0
Instructions to Counsel to argue an Appeal	1	0	0
Instructions to Counsel to argue a Petition or Motion	0	10	0
Instructions to printer	0	10	0
Attending Consultation	1	0	0
Attending at the Council Chamber for the hearing of a Petition or Motion	1	6	8
Attending at the Council Chamber all day on an appeal not called on	2	6	8
Attending the hearing of an Appeal, per day	3	6	8
Attending a Judgment	1	6	8
Approving Draft order	0	10	0
Attendances generally	0	10	0
Attendances on Counsel where fee is 30 guineas or over	1	0	0
Drawing Bill of Costs, <i>per folio</i>	0	1	0
Copying Bill of Costs, <i>per folio</i>	0	0	6
Attending Taxation of Costs of an Appeal	2	2	0
Attending Taxation of Costs of a Petition or Motion	1	1	0
Sessions Fee for each year or part of a year from the date of Appearance (in Appeals only)	3	3	0
Letters, etc. (in Petitions)	1	1	0
Letters, etc. (in Appeals), for 1st year	2	2	0
Letters, etc. (in Appeals), for each following year	1	1	0

II

Council Office Fees.

Entering Appearance	1	0	0
Amending Appearance	1	10	0
Examining proof print of Record with the certified record at the Registry (chargeable to Appellant only), <i>per day</i>	2	0	0

	£.	s.	d.
Examining proof print of Record with the certified record at the Registry (chargeable to Appellant only,) <i>per half day</i>	1	0	0
Lodging Petition of Appeal	3	0	0
Lodging Petition for special leave to appeal	2	0	0
Lodging any other Petition or Motion	1	0	0
Lodging Case or Notice under Rule 60	2	0	0
Setting down Appeal (chargeable to Appellant only)	5	0	0
Setting down Petition for special leave to appeal (chargeable to Petitioner only)	2	0	0
Setting down any other Petition (chargeable to Petitioner only)	1	0	0
Summons	1	0	0
Committee Report on Petition	2	0	0
Committee Report on Appeal	3	0	0
Original order of His Majesty in Council determining an Appeal	5	0	0
Any other original Order of His Majesty in Council	3	0	0
Plain copy of an Order of His Majesty in Council	0	5	0
Original Order of the Judicial Committee	2	0	0
Plain copy of Committee Order	0	5	0
Lodging Affidavit	0	10	0
Certificate delivered to parties	0	10	0
Lodging Caveat	1	0	0
Subpœna to witnesses	0	10	0
Taxing Fee, 6 <i>d.</i> for each pound allowed, or a fraction thereof, up to £300, and one per cent., beyond that sum, calculated at the rate of 5 <i>s.</i> for each £25, or a portion thereof.			

CHAPTER VII.

REFERENCES TO A FULL BENCH.

1. Whenever one Division Court shall differ from any other Division Court upon a point of law or usage having the force of law, the case shall be referred for decision by a Full Bench.

2. If the question arise in an Appeal from an Appellate Decree, the Court referring the case shall state the point or points upon which they differ from the decision of a former Division Court and shall refer the Appeal for the final decision of a Full Bench.

3. If the question arise in an Appeal from an Original Decree, the questions of law shall alone be referred, and the Full Bench shall return the case with an expression of its opinion upon the points of law for final adjudication by the Division Court which referred it, and in case of necessity in consequence of the absence of any or either of the referring Judges, for the ultimate decision of another Division Court.

4. If the question arise in any matter coming before a Division Court in the exercise of its Civil Revisional Jurisdiction, the point or points shall be stated as provided in rule 2, and the matter shall be referred for the final decision of a Full Bench.

5. If the question arise in any case coming before a Division Court as a Court of Criminal Appeal, Reference or Revision, the Court referring the case shall state the point or points on which they differ from the decision of a former Division Court, and shall refer the case to a Full Bench for such orders as to such Bench may seem fit.

6. Every decision of a Full Bench shall be treated as binding on all Division Courts, and Judges sitting singly, upon the point of law or usage having the force of law determined by the Full Bench, unless it be subsequently reversed by a Bench, specially constituted, consisting of such number of Judges as in each case shall have been fixed by the Chief Justice, or unless a contrary rule be laid down by the Judicial Committee of the Privy Council.

NOTE.—The judgment of the Court in all Civil and Criminal cases heard by a Full Bench shall be printed and distributed for information to all the Judges of the Court.

CHAPTER VIII.

APPEALS UNDER SECTION 15 OF THE LETTERS PATENT.

1. The provisions of Chapters IV and V shall apply, so far as may be, to every Appeal under section 15 of the Letters Patent.

2. Every Appeal to the High Court under section 15 of the Letters Patent from a judgment of a Division Court, or a Judge sitting singly, on the Appellate Side of the High Court, shall be presented to the Deputy Registrar, or such other officer as the Registrar may appoint, within 30 days from the date of the judgment appealed from, unless the Court in its discretion, on good cause shown, shall grant further time.

3. The memorandum of appeal shall be drawn up in accordance with the provisions of Order XLI, rule 1, Civil Procedure Code, and shall be subscribed by an Advocate of the Court. It need not be accompanied by a copy of the judgment appealed from. It shall be the duty of the officer to whom the memorandum is presented under rule 2 above to endorse thereon the date of presentation and send the same to the Stamp Reporter, who shall satisfy himself that there is a declaration by the Judge who passed the judgment that the case is a fit one for appeal, and that it is in order and within time.

4. The fee for the issue of notice to the respondents who did not appear in the appeal in which judgment was given shall be paid into Court by the appellant:—

(a) in the case of an appeal from the judgment of a Judge sitting singly: within 21 days of the date on which the appeal is registered;

(b) in other cases: at the time of presenting the memorandum of appeal.

5. The Appellant at the time of paying the fee prescribed in the preceding rule shall also file printed

forms of notices duly filled up in the manner prescribed in Chapter V, Rule 35.

6. Separate registers shall be opened for the entry of such appeals in the following form:—

Number of the Appeal to the High Court and the date on which it is filed.	Number of the Original Appeal to the High Court, date of the judgments of the Division Court or the Judge sitting singly, appealed from, and name or names of the presiding Judge or Judges.	Appellant.	Respondent.	Advocate for Appellant.	Advocate for Respondent.	Particulars of suit.	Date of issue of notice for service on the Respondent.	Date on which the appeal is heard, and date of judgment of the Court.	Nature of the order passed.	Remarks.

7. If the appeal is in order and is within time, the officer to whom the appeal was presented shall cause it to be registered. If the appeal is not in proper form, he shall proceed in the manner provided by Chapter V, rule 10 (1).

8. If the process-fee be paid and the notice forms be filed within the period prescribed by rules 4 and 5, the officer in charge of the Judicial Department shall issue the notice of appeal in the prescribed form [see Forms Nos. 7 and 8 (Civil), pages 180

and 181, Appendix I] for service on the respondent, and shall cause the notice to be served on the Advocate, or any of the Advocates who may have appeared for the respondent in the appeal in which the judgment was given. In any case in which the respondent may not have entered appearance in the appeal in which the judgment was given, the notice shall be served in the mode provided by rules 38 to 47 of Chapter V for the service of notices in ordinary appeals.

9. In every appeal under section 15 of the Letters Patent against the judgment of a Division Court or of a Judge sitting singly, on the Appellate Side of the High Court, copies of the memorandum of appeal and of the judgments or judgment shall be typed, and four copies shall be prepared for use at the hearing.

10. No charge shall be levied from the parties on account of the preparation of these copies.

11. The paper books prepared for use at the hearing of the original appeal shall be used at the hearing of the Appeal under section 15 of the Letters Patent.

CHAPTER IX.

PREPARATION OF PAPER-BOOKS.

PART I—GENERAL.

1. The printing of Paper-books shall be in accordance with the following directions:—

(a) The Paper-books shall be printed in the form known as demy quarto, *i.e.*, 54 ems (or 9 inches) in length and 42 ems (or 7 inches) in width;

(b) The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches long and 8½ inches wide;

(c) *The type to be used in the text shall be pica types but long primer shall be used in printing accounts, tabular matter and notes;

(d) The number of lines in each page of pica type shall be 47, or thereabouts, and every tenth line will be numbered in the margin, *i.e.*, the tenth line will be numbered 10, and the second tenth line 20, and so on.

2. "Editing" the Paper-book includes—

(i) Collecting and arranging the papers required for inclusion in the Paper-book;

(ii) Examining and comparing proofs, or when several copies of a typed Paper-book are prepared, examining and comparing such copies (other than the first copy) with the originals or authenticated copies of English papers or translations where the rules provide for translations;

(iii) The preparation of title pages and indices;

(iv) The general supervision necessary to ensure the accuracy of the record and compliance with the provisions of the Appellate Side Rules with regard to the preparation of Paper-books.

NOTE.—The repetition of unnecessary titles in the document should be avoided and formal portions of documents omitted.

3. Every Paper-book shall have attached to it a fly-leaf in the prescribed form, and giving the particulars required by Rule 42.

4. In urgent cases, upon good cause being shown, the Registrar may allow any party to put in such number of typed copies of the Paper-book as he may consider necessary.

Exception.—In an appeal from original order which is to be heard under Order XLI, Rule 11, Civil Procedure Code, no Paper-book shall be prepared unless and until an order for the service of notice on the respondent has been made.

5. There shall be inserted at the end of one copy of the Paper-book prepared in every case a statement

in form No. 9 (civil), page 182, Appendix I, in which shall be specified each item of the cost incurred in its preparation by the Appellant, and the Respondent, respectively. A copy of the statement shall be served on the party himself by registered post with acknowledgment due, the cost for the same being included in the estimate and deducted from the Initial Deposit.

6. In the case of Appeals, other than Appeals from Appellate Decrees, any surplus remaining after deducting the costs actually incurred by each party from the amount deposited with the Accountant of the Court, may be refunded upon request to the party by whom the deposit was made, or to the Advocate entitled to act for such party.

7. The costs incurred in the preparation of the Paper-books shall be costs in the Appeal, unless as to the whole or any portion thereof the Court which hears the Appeal shall otherwise direct.

8. No order shall be passed exempting any Appellant or Respondent from the operation of the whole or any part of the Rules of this Chapter, or no special order shall be made as to any matter with which these Rules are concerned, except upon application duly stamped with a Court Free of Rs. 2, setting forth sufficient grounds.

An application for enlargement of time for the doing of any act required to be done under these Rules shall ordinarily be made before the expiry of the prescribed time:

“Provided that where compliance with the Rule or Rules concerned or with any order passed in connection therewith takes place by the end of the day on which the case appears on the Lawazima List of the Registrar, the application may, in the discretion of the Registrar, be dispensed with.”

(No. 31, Notification No. 1199IG., dated the 14th September, 1937.)

9. When these Rules direct or allow any act to be done by, or any notice to be given to, an Appellant or Respondent, such act may be done by, or such notice given to, the Advocate.

9A. In all Second Appeals not exceeding Rs. 50 in value, all Appeals from Original Orders, all Appeals from Appellate Orders and all Appeals from Orders of Remand under Order XLI, Rule 23 of the Civil Procedure Code, not exceeding Rs. 50 in value, there shall be filed, at the time of filing the appeals, second copies of the memoranda of appeal and of the judgments and orders of lower courts (in the case of Second Appeals and Appeals from Appellate and Remand Orders, copies of the judgments or orders of both the lower courts) for the use of the second Judge of the Bench taking such Appeals. These second copies shall be plain uncertified copies.

PART II—APPEALS FROM ORIGINAL DECREES.

A—General.

10. On receipt of the record from the lower Court it shall be the duty of the Registrar to see that the Paper-book in an appeal from an Original Decree for the use of the High Court at its hearing is prepared in accordance with the directions given in the following Rules:

Provided that the Registrar or the Division Court having jurisdiction over any particular Group may, for sufficient cause shown, pass any special order regarding the preparation of the Paper-book of any particular Appeal belonging to that Group.

11. Part I of the Paper-book shall contain the following papers:—

- (a) The plaint;
- (b) Written statement of parties interested in the appeal;
- (c) Examination of parties or their agents, etc.;

- (d) Issues framed (if any) ;
- (c) Depositions of witnesses for plaintiff ;
- (f) Depositions of witnesses for defendant ;
- (g) The judgment and the decree or order from which the appeal is preferred, exclusive of schedules ;
- (h) Memorandum of Appeal ;
- (i) A chronological index.

In this part shall also be included the following papers when their inclusion is necessary for the purpose of the Appeal, provided that the Registrar, may upon application being made to him, direct that any paper or part of a paper shall not be included in this part :—

- (a) Order-sheet ;
- (b) Schedules (if any) ;
- (c) Report of Commissioners (if any) with maps, depositions, etc., annexed ;
- (d) Any other paper, other than an exhibit, on which the decision of the Appeal depends.

Part I shall also contain an Index which shall be drawn up in accordance with the provision of Rule 48 (ii).

Part II of the Paper-book shall consist of exhibits.

NOTE (1).—No finding or conclusion in the decision appealed from will be permitted to be challenged at the hearing of the Appeal unless the material on which such challenge is based is included in the Paper-book.

NOTE (2).—Whenever a map prepared by a settlement or survey authority and issued in printed form is necessary for inclusion in a paper-book, such map being an exhibit in the case, it shall not be necessary to reprint and reproduce such map. It will be sufficient if the requisite number of copies of the map are filed by the party concerned, if such copies can be purchased from the Government or other agents selling the same. Such copies when filed shall be taken as forming part of the Paper-book. If in any case any lines, symbols or marks have been drawn, inserted or made in the map by

any Survey Commissioner appointed by the Lower Court, or by any witness or party or by the Court itself, such lines, symbols or marks being drawn, inserted or made under the authority of the presiding Judge, those lines, symbols or marks shall be reproduced on the copies of the map filed by the party or parties in the appeal.

12. Upon receipt of the records the Officer in charge of the Judicial Department shall serve a notice on the Appellant requiring him to prepare and deliver to such Officer a list of all papers (other than those mentioned in the first paragraph of Rule 11 above) upon which the decision of the Appeal depends and which the Appellant desires to be included in Parts I and II of the Paper-book at his expense. This list shall be called "The Appellant's List" and shall be divided into two parts. Part I shall contain papers other than exhibits and Part II shall contain the exhibits.

13. Such list shall be in form No. 10 (civil), page 183, Appendix I.

Printed copies of the form of this list will be supplied to the parties or the Advocates entitled to act for them, free of costs, on application to the Forms Clerk.

14. There shall be entered in such list all documents on which the decision of the Appeal depends:

Provided that if it is necessary only to print a portion of any particular document for the decision of the Appeal the relevant portion shall be specified which may be done by surrounding the portion in pencil.

Provided also that ordinarily a long series of documents, such as accounts, rent-rolls, etc., shall not be printed in full but the parties, or their legal agents, shall agree to short extracts being printed, if necessary, in tabular form.

15. In Part II of this list the exhibits should retain their original numbers with the proper page

numbers attached, the documents should be arranged, as far as suitable, in chronological order, mixing plaintiff's and defendant's documents together, when necessary, but in all cases documents relating to the same series, or to the same subject (*e.g.*, a series of correspondence, or proceedings in a suit other than the one under appeal) should be kept together. A correct and full description of such documents must be given.

16. The Appellant shall, within three weeks after service of the notice required by Rule 12, deliver to the Officer in charge of the Judicial Department his complete list prepared in accordance with the above Rules.

Applications for enlargement of the time allowed under this Rule shall ordinarily be made before the expiry of the prescribed time, shall be duly stamped with a Court Fee of Rs. 2 and shall set forth sufficient grounds in support of the application.

17. On receipt of the list of the papers to be included in Parts I and II of the Paper-book at the expense of the Appellant, the Officer in charge of the Judicial Department shall cause to be prepared estimates of the cost of the preparation of Parts I and II of the Paper-book.

18. As soon as the list is delivered to the Officer in charge of the Judicial Department by the Appellant, the former shall, if the Respondent enters appearance on or before the date mentioned in the notice under Order XLI, Rule 14, Civil Procedure Code, give notice of such delivery to such Respondent. If the Respondent fails to enter appearance on or before the date mentioned in the notice under Order XLI, Rule 14, and if it shall appear that the said notice has been duly served on such Respondent, he shall not, without the leave of the Registrar, obtained upon an application (unstamped) filed simultaneously with the Vakalatnama explaining the delay

in appearing and asking for notice of the Appellant's list, be entitled to file a list of papers for insertion in the Paper-book under Rule 20.

19. Every Respondent, who has entered appearance, shall be entitled to inspect the Appellant's list and, at his own expense, to obtain a copy of the whole or of any portion thereof.

20. Every such Respondent shall, within three weeks after service upon him of the notice required by Rule 18, deliver to the Officer in charge of the Judicial Department a list in duplicate in form No. 11 (civil), page 184, of Appendix I, of the papers, other than those inserted in the Appellant's list, and relevant to the subject matter of the Appeal, to which such Respondent desires that reference shall be made by the Court at the hearing of the Appeal and which shall be inserted in the Paper-book at such Respondent's expense. Such list shall be termed "The Respondent's List" and shall be divided into two parts like the Appellant's List (Rule 12).

20A. The Advocates for the Appellant and the Respondent shall at the time of filling their respective Lists, enter in such Lists the names and correct addresses (with Post Office) of the parties on whose behalf the Lists are filed by them.

21. The Officer in charge of the Judicial Department shall within fourteen days after the delivery by the Appellant and the Respondent of their lists, respectively, make and deliver to the Advocate for such Appellant and to the Advocate for such Respondent separate estimates of the costs of preparing their portions of the Paper-book in form Nos. 12 (civil) and 13 (civil), respectively, pages 185 and 186, of Appendix I. Copies of the estimate shall be served on the parties (Appellant and Respondent) themselves by registered post with acknowledgment due the cost for the same being included in the estimate and deducted from the Initial Deposit.

Every estimate for the cost of the preparation of the Paper-book shall include the cost of transcribing, translating, and printing, etc., the documents mentioned in the first paragraph of Rule 11 above. No revision of the lists filed by the Advocates of either party shall be allowed after the estimates have been prepared and served on the respective Advocates, except under the orders of the Registrar to be obtained on an application with notice to the other side. The application for revision shall be a verified one but if the revision is agreed to by the opposite party such application for revision need not be verified.

22. The Appellant and Respondent respectively shall deposit with the Accountant of the Court the amount due on the estimates served under Rule 21 with the periods here specified—

(a) The amount due for estimating, translating, and examining translations after (in the case of the Appellant) deducting the amount of the Initial Deposit made under Rule 34(1), Chapter V, within four weeks of the service of the estimate upon the Advocate for such appellant and respondent respectively; and

(b) The whole of the remainder within eight weeks of the service of the estimate upon the said Advocate.

23. If the Respondent considers that any paper or portion of a paper which ought to have been inserted in the Appellant's list under the provisions of Rule 14 has been omitted therefrom in violation of these provisions, he may, at the time of filing the Respondent's list as prescribed in Rule 20, and after giving notice to the Appellant of his intended application, apply to the Registrar for an order that such paper or portion of a paper be inserted in the Paper-book of the case at the cost of the Appellant:

Provided that if any such application by a Respondent is disallowed by the Registrar, such Respondent shall be at liberty, at that time, to pray for the

inclusion of the papers mentioned in his application, in his list (that is, the Respondent's List) at his own cost:

Provided also that if the Respondent has entered appearance out of time he shall not be permitted to pray for the inclusion in, or exclusion from, the Appellant's list of any papers whatsoever if such application be not made before the actual preparation of the Paper-book has commenced.

24. If one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included and the Registrar allows the document to be included, the Order Book and List shall clearly indicate the fact that, and the party by whom, the inclusion of the document was objected to.

25. The Registrar as well as the parties and their legal agents shall endeavour to exclude from the Paper-book all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the Appeal, and generally, to reduce the bulk of the Paper-book, as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents.

NOTE (1).—Ordinarily, a long series of documents, such as account, rent-rolls, inventories, etc., should not be printed in full; but the parties or their legal agents should agree to short extracts being printed as specimens.

NOTE (2).—Documents produced before the Court of first instance, but not admitted in evidence, shall not be included in the Paper-book except under the orders of the Registrar obtained upon an application (unstamped) with notice to the opposite party. An Advocate desiring to refer to any such document at the hearing of the Appeal before the High Court shall, at any time before the hearing, serve on the Advocate for the opposite party a typewritten copy, or a typewritten copy of the translation, as the case may be, of any such document to which he desires that reference should be made, and shall also provide two such typewritten copies or typewritten

copies of the translation for the use of the Court. If he fails to do so he shall not refer to such document at the hearing and no adjournment of the Appeal will be granted on this account unless the Court otherwise directs.

26. The Appellant's and the Respondent's lists shall each bear a certificate under the hand of the Advocate for such Appellant or Respondent in the following form:—

I, A.B., Advocate for do hereby certify that I have carefully examined this list with reference to the provisions of Rule 25, Chapter IX of the Appellate Side Rules, and declare that in my judgment it is necessary to include in the Paper-book of the Appeal every document, or portion of a document, included in the list in order to arrive at proper decision of the Appeal.

26A. In cases in which any paper or papers which are to be included in the paper book under Rule 11 or Rule 67(A) of this Chapter have been omitted from the list, the office shall give notice to the Advocate concerned to the effect that unless the list is amended within four days from the receipt of such notice or an order for the exclusion of such paper or papers is obtained upon a stamped application before the expiry of that period, the paper or papers will be included in the list under the aforesaid rules, and the office shall proceed to include them on the expiry of the said period if no action is taken by the Advocate.

(No. 36, Notification No. 1199IG., dated the 14th September, 1937.)

27. If the Respondent does not enter an appearance or does not deliver the list directed by, and within the time prescribed by, Rule 20, and if no order be made under Rule 23, the Paper-book shall be prepared in accordance with the Appellant's list.

28. When two or more Appellants or Respondents have the same interest in the Appeal, one set of list only shall be required from all such appel-

lants or Respondents. Appellants or Respondents having separate interests shall deliver separate sets of lists. In such cases the principle of Rule 32 shall apply.

29. If any of the papers, which must be inserted in the Appellant's List or in the Respondent's List, was previously printed in a former Paper-book, the fact of its having been so printed must be stated in the list in which such paper is inserted. Such papers shall not be printed unless the Registrar otherwise directs:

Provided that the party who refers to papers in a previous paper book, but who has not paid for the preparation of such previous paper book, shall pay the charges fixed for the sale of paper books from the Record Department if he requires a copy for his own use, and shall supply a copy at his cost to the other side unless the other side has paid for such previous paper book in which event the copy supplied to him shall not be charged for. If either party contributed to the cost of the previous paper book, copies required for the use of the Court shall not be charged for, otherwise the party referring to papers in such paper books shall pay for the copies required for the use of the Court.

(No. 36, Notification No. 1199IG., dated the 14th September, 1937.)

30. No paper in the record of the case, which is not inserted in the Appellant's or Respondent's List, or ordered to be included in the Paper-book under Rule 23, and printed in the Paper-book of the case or in a previous Paper-book, shall be referred to at the hearing of the Appeal without the special leave of the Court. But this rule shall not preclude the Court from referring to any paper to which it considers a reference necessary for the ends of justice.

31. If it subsequently appears that the amount deposited by either party to the Appeal is insuffi-

cient to defray the cost of preparing his portion of the Paper-book, or a supplementary Paper-book after remand, the Officer in charge of the Judicial Department shall estimate the additional amount required and shall give notice thereof to such party. Such additional amount shall be deposited by such party with the Accountant of the Court within two weeks after service upon him of such notice. No work in the matter of the preparation of the Paper-book, which is likely to cost more than the sum deposited, should ordinarily be undertaken, until such additional deposit has been made, unless the Registrar shall otherwise direct.

32. When separate Appeals have been preferred by different persons against the same decree, complete list of the documents which the parties wish to include in the Paper-book shall be delivered by the parties to each Appeal. Common matter shall appear in one Paper-book only, the other Paper-books containing references to the pages of the Paper-book in which such common matter appears. In such cases the Officer in charge of the Judicial Department shall, subject to the order of the Registrar, apportion between the parties concerned the cost of preparation in respect of matter common to all or any of the parties. The estimates for the cost of the preparation of Parts I and II of the Paper-books in such cases shall not be served on the parties until such apportionment has been made. This rule shall also apply when two or more separate Appeals are preferred in analogous cases.

33. If the Appellant fails to deliver his list of papers in accordance with Rule 16, or if the Appellant or Respondent fails to make the deposit or additional deposit, required by Rules 22 and 31, respectively, the Officer in charge of the Judicial Department shall lay the matter before the Registrar, who may, in case of default by the Appellant, cause the appeal to be set down for hearing; and the Court may,

unless satisfied that there was reasonable ground for the default, direct the Appeal to be dismissed for want of prosecution or may pass such other order as may seem proper in the circumstances of the case.

34. The Appellant shall within ten days of the registration of the appeal file with the Officer in charge of the Judicial Department a declaration duly signed by himself stating the name of the Advocate, duly qualified under Rule 35, by whom his Paper-book will be prepared, either in accordance with Rule 46 or with Rule 50, and such declaration shall be noted in the order book of the Appeal. The declaration shall be in the following form:—

In this Appeal I|we,....., Appellant|Appellants, declare that the Paper-Book will be prepared by Mr....., an Advocate of this Court, who is duly qualified to prepare Paper-book under Rule 35, Chapter IX of the Appellate Side Rules.

The Officer in charge of the Judicial Department shall thereupon make over to the Advocate so named the duplicate copy of the Respondent's list filed under Rule 20, giving the Respondent notice thereof.

NOTE.—In line 7 the figures 46 and 50 have been substituted for the figures 45 and 49, respectively.

Vide No. 5, Notification No. 858G., dated the 19th January, 1937.

35. Any Advocate who has practised in the High Court for a period of three years, or who has practised in a Muffasal Court for not less than three years and in the High Court for not less than one year, shall be entitled to prepare a Paper-book under these rules.

Provided that a Division Court, on being satisfied, either on the report of the Registrar or otherwise, that any Advocate has been negligent, incompetent, or careless in the preparation of a Paper-book, may disqualify such Advocate from preparing

Paper-books for such period as to it may seem proper.

36. An Advocate duly authorised to prepare a Paper-book shall be required to make a declaration in writing simultaneously with the deposit under Rule 22(a) to the effect that he will himself do the translation work and, in the case of an Appeal valued under Rs. 10,000, a declaration to the effect that he will himself also do the editing. The declaration shall be in the following form:—

In the above Appeal I..... have been authorised by the Appellant under Rule 34 to prepare the Paper-book in this case. I being eligible under Rule 35 to do so declare under Rule 36 Chapter IX of the Appellate Side Rules, that I shall myself do the translation work (and the editing work).

37. (a) An Advocate authorised under Rule 34, who has filed a declaration under Rule 36, shall be afforded all reasonable access to the original record in order to enable him to make transcripts of the papers and do other acts necessary to the preparation of the Paper-book, but he shall not be entitled to remove such original record from the Court's office. Certified transcripts of the papers shall be furnished to him, if he so desires, upon payment of the usual rates.

(b) Such Advocate shall himself deal with the original records made over to him, and is hereby prohibited from entrusting them to the care of any other person. For the purpose of translating and copying documents in any case, he alone will be permitted to have access to the original record of such case.

(c) Such Advocate shall be permitted to utilize the services of one reader or Muharrir to assist him in such work. He must however himself be present and continuously in possession of the records, and on his leaving the office, the records must be returned to the Officer of the Court in charge, and the work

of preparing the Paper-book must at once cease, the reader or Muharrir leaving with his employer.

(*d*) In the case of any Paper-book in which a map has to be inserted such Advocate shall be allowed to utilize also the services of a draftsman, who will be allowed access to the records on the same terms as the reader or Muharrir.

(*e*) The Advocate filing a declaration under Rule 36 shall examine, at the time of filing such declaration, the lists and estimates prepared for the preparation of the Paper-book and, if he thinks that he requires the assistance of another Advocate or Advocates for the preparation of the Paper-book, shall present a formal application to the Registrar stating the grounds upon which the application is made, and the Registrar may pass a special order after an examination of the actual requirements of the case:

Provided that every additional Advocate allowed shall have already entered appearance on behalf of the Appellant; be eligible under Rule 35; and comply with the provisions of Rule 36.

The provisions of clauses (*a*) to (*d*) of this Rule shall apply to all the Advocates thus employed in the preparation of a Paper-book, and they shall be jointly responsible under the Rules of this Chapter for the proper and punctual preparation of the same.

NOTE.—The provisions of this sub-rule will not apply to the case of assistance of another Advocate for the purpose of inspecting records or preparing lists. In such a case an unstamped application will be accepted.

(No. 39, Notification No. 11991G., dated the 14th September, 1937.)

38. (*a*) The time within which the examination of translations should be completed is as follows:—

(*i*) When the Paper-book is estimated by the Officer in charge of the Judicial Department to consist of not more than 100 pages—two weeks;

(ii) When the Paper-book is estimated by the Officer in charge of the Judicial Department to consist of more than 100 pages but more than 200 pages—three weeks;

(iii) In any other case—one month.

Provided that the Registrar may, upon an application showing sufficient cause, pass a special order granting such extension of time as he may think fit.

(No. 40, Notification No. 11991G., dated the 14th September, 1937.)

(b) On the completion of the examination of the translations, but not before, and provided that the translations have been properly done and accepted, the Advocate preparing the Paper-book shall be entitled to withdraw the amount due to him for such translations.

39. (a) Translations of the papers shall be submitted for examination within the following limits of time from the date when the deposit required by Rule 22(a) above are made:—

In cases exceeding 5,000 but less than 10,000 vernacular words—one month;

In cases exceeding 10,000 vernacular words—two months;

In cases less than 5,000 vernacular words—three weeks.

(b) Paper-books in Appeals from Original Decrees must be made ready and filed with the Officer in charge of the Judicial Department within the following limits of time from the date when the deposits required to be made under Rule 22(b) above are made, viz.:—

(i) In the case of Paper-books falling within clause (i) of Rule 38—two months;

(ii) In the case of Paper-books falling within clause (ii) of Rule 38—ten weeks;

- (iii) In the case of Paper-books falling within clause (iii) of Rule 38—four months.

Provided that the Registrar may, upon an application showing sufficient cause, pass a special order granting such extension of time as he may think fit.

(No. 41, Notification No. 11991G., dated the 14th September, 1937.)

(c) On the Paper-books being filed, they shall be taxed, and it will be the duty of the Taxing Officer to see that they have been prepared in accordance with these Rules.

(d) When the Taxing Officer is satisfied that the Paper-book has been properly prepared, he shall certify accordingly, and upon such certificate being granted but not before, the balance of the amount due to the Advocate concerned shall be paid to him on application: Provided that the Registrar may, in any proper case, pay the printer's fees to the printer.

40. It shall be the duty of the examiners of Translations to report through the Taxing Officer to the Registrar any case in which the translations have been carelessly, negligently, or imperfectly done, and it shall be the duty of the Taxing Officer to report to the Registrar any case in which the preparation of any other portion of the Paper-book has been carelessly, negligently, or imperfectly done. The Registrar, if he thinks fit, will report any such matter to the Court, who may take action under the proviso to Rule 35, and may either in addition to, or without taking such action, direct that the whole or any portion of such funds, as are lying in the Court, to the credit of the account of the Paper-book concerned be withheld from the Advocate in question, and may pass orders for the disposal of the funds so withheld.

41. When a case is ready for hearing, the Officer in charge of the Judicial Department shall furnish the Advocates engaged on either side with the copies to which they are entitled under Rule 49 or Rule 53.

The issue of the Paper-books to the Advocates will be notice to them that the case is ready for hearing.

42. The endorsement on every Paper-book prepared for the use of the High Court at the hearing of the Appeal shall furnish the following information:—

- (a) The number of the cause;
- (b) The name of the Judge of the Court below;
- (c) The names of the parties and their Advocates;
- (d) The date of the institution of the suit;
- (e) The date of the lower Court's judgment;
- (f) The date on which the Appeal was filed;
- (g) The date on which the Appeal was decided; and
- (h) The date on which the decree was signed.

43. In Appeals in which the Respondent shall not have appointed an Advocate up to the date of the preparation of the Paper-book, an Appendix containing the deposition of the serving officer and the return and the remarks of the lower Court as to the service shall be added to the Paper-book either in transcript or translation, according as they may be in English or in the vernacular.

44. The supplementary Paper-book, after the receipt of finding of a lower Court in a case referred under Order XLI, Rules 25 and 27, Civil Procedure Code, shall be governed by the Rules of this Chapter.

45. Notwithstanding anything contained in these Rules, the Registrar may, upon application made to him, direct that, in Appeals below Rs. 5,000 in value in which if Parts I and II of the Paper-book were printed, the total number of pages contained in the Paper-book would be 25 or less, 12 typewritten copies of the Paper-book shall be prepared at the cost of the parties. In such cases, the Appellant and the Respondent, if the latter enters appearance, shall be entitled to have, free of charge, as many copies of the

Paper-book, not exceeding four on either side, as they may have Advocates engaged in the Appeal. In any case, they shall each be entitled to two copies. Additional copies over and above those which may be supplied to the parties free of charge under this rule shall be charged for.

B—Appeals from Original Decrees valued under Rs. 10,000.

46. (1) Paper-books in Appeals valued under Rs. 10,000 shall be prepared entirely in the office of the Advocate for the Appellant and the Advocate concerned will be free to print his Paper-book in any press he chooses whether such press be on the list referred to in Rule 54 or not, but the Advocate will be responsible to the Court that the Paper-book has been prepared and printed with due care and diligence. Bad work on the part of the press will bring the Advocate concerned within the mischief of the proviso to Rule 35.

(2) The examination of translations shall be done on the fee system by a panel of Examiners formed for the purpose from the practising Advocates of the Court (to be known as the "Below" panel), a list of Advocates forming such panel being maintained in the office of the Court from which the Respondent will select an Examiner for examining the translations made by the Appellant's Advocate.

Provided—

(a) That if the Respondent fails to enter appearance by the time the Appellant submits his translation for examination he shall lose his privilege to select the Examiner, and the translation shall be examined by an Examiner from the "Below" panel to be selected by the Registrar;

(b) That where it appears to the Registrar that a particular Examiner is overworked and another is underworked, it shall be open to the Registrar to call

for a fresh nomination or to direct that the work be done by some other Advocate on the panel;

(c) That if the Advocate for the Respondent is on the panel of Examiners, it shall not be competent for him to nominate himself;

(d) That where two or more Advocates appear for one Respondent or set of Respondents and select different Examiners the nomination by any one of such Advocates first received by the office should prevail and that, subject to that condition, the nomination by one of the Advocates appearing for the principal Respondent should have preference over the nomination by the Pro forma Respondent.

(3) The Paper-books must be prepared within the period specified in Rule 39 but in calculating the said period the time actually taken in examining the translation shall be deducted.

47. The estimate for the preparation of the Paper-books in such Appeals shall state separately the cost of translating, editing, printing, etc., at the following rates:—

- (a) Estimating at 10,000 words per rupee;
- (a1) Estimating charge for maps—12½ per cent. of the cost of tracing the same;
- (a2) Estimating charge for photographs—12½ per cent. of the cost of producing the negative;
- (b) Translating at 150 vernacular words per rupee, three figures being counted as one word;
- (c) Examining translations at 300 vernacular words per rupee, three figures being counted as one word;
- (d) Copying at the rates specified in Chapter XIII;
- (e) Editing the Paper-book at eight annas a page, if it is printed, and at five annas a page if it is typed;

- (f) Lithographing, drawing or tracing maps (where necessary)—actual cost;
- (g) Printing fee for 24 copies (ordinary matter with marginal notes)—actual cost, not exceeding Re. 1-2 per page; tabular matter—actual cost;
- (h) Taxing the Paper-book costs at annas two per page.

NOTE (1).—The above rates are liable to alteration.

(2) The charge for editing includes the charge for Indexing, if the Paper-book is printed, and that for stationery if the Paper-book is typewritten.

(3) If the document to be translated is in any language other than the vernacular of Bengal and Assam, the rates prescribed by Rule 8 and the note thereunder in Chapter XII will apply.

(4) Each item of cost in the preparation of the Paper-book at the rates specified above should be calculated to the nearest anna (fraction, below half an anna being omitted and half an anna or over being reckoned as one anna).

The entire cost estimated as above shall be deposited with the Accountant of the Court and from such deposit the Court's office will keep the undertaking Advocate supplied with funds to carry on the work of the preparation of the Paper-book. When the Paper-book is finally prepared the cost shall be taxed under the direction of the Registrar.

48. The Paper-books for the use of the High Court in such Appeals shall be printed and edited in accordance with the following directions:—

(i) The printed Paper-book shall consist of two parts in the same volume, where practicable, viz., Part I and Part II. Part I shall contain the record of the proceedings in the lower Court, and shall include all the papers mentioned in Rule 11. These should be printed strictly in chronological order, that is, in the same order as the Index. Part II shall contain the exhibits and documents relevant to the subject-matter of the appeal which should be arranged in the manner prescribed in Rule 15, each document to show its

exhibit mark and whether it is a plaintiff's or defendant's document (unless this is clear from the exhibit mark). Each Part should be paged at the foot of each page. The heading to each document should consist of the number of exhibit mark and the description of the document in the Index with the date, and the corresponding English date must be given if the document bears any other date.

(ii) The Index of Part I shall be in chronological order and shall be placed at the beginning of the volume. Part II shall have two Indices, one in chronological order and the other in order of the exhibit marks. These Indices should be placed immediately after the Index to Part I. The documents in Part I should be numbered consecutively, while those in Part II should not be numbered apart from the exhibit mark. The Index should contain a correct and full description of each document and reference to the pages in the printed Paper-book. Whenever any document included in Part I or II of the Paper-book is dated according to Bengali fashion, the corresponding English date of such document must be entered in the Index.

(iii) All papers which are not in English shall be translated into that language. Such translation and the original English papers shall be arranged and printed in Parts I and II in the order prescribed by the first sub-clause of this Rule.

(iv) Maps forming part of a Paper-book shall be included in the Index, but shall not be bound up with the other papers in the Paper-book. Such maps shall be drawn or printed on durable paper and they shall form a separate packet with a separate list.

Translations of vernacular phrases or figures that form part of a map must be submitted on a correct tracing of the map in question.

(v) Each document shall have a marginal note which is to be repeated on each page over which the document extends, viz.:—

- (a) The short name of the Court shall first appear,
- (b) The marginal note of the document shall then appear consisting of the number and description of the document in the Indices with the date except in the case of oral evidence,
- (c) In the case of oral evidence "plaintiff's evidence" or "defendant's evidence" shall appear beneath the name of the Court and then the marginal note consisting of the number in the Indices and the witness's name with "examination" "cross-examination" as the case may be.

49. Twenty-four copies of the Paper-book shall ordinarily be printed by the Appellant's Advocate, and filed in the office of the Court. On the application of either party, the Registrar may direct a larger number to be printed. In any case, 10 copies shall be retained for use in the High Court. The service of Paper-books on the parties under Rule 41 will be regulated as follows:—

To the Appellants—Three copies, or one copy for the use of each Advocate who has appeared, whichever is more;

To the Respondents—One copy only for the use of the Advocate or all the Advocates, who has, or have, appeared for each set of Respondents;

Subject to a maximum of seven copies on either side if 24 copies have been printed. If on this basis, less than 14 copies have been distributed between both sides, additional copies up to that number may be supplied for use at the hearing on application to the Officer in charge of the Judicial Department; but the latter should, if possible, retain copies for such of the Respondents who may still enter appearance in the Appeal.

*C—Appeals from Original Decrees valued at
Rs. 10,000 or over.*

50. Paper-books in all Appeals valued at Rs. 10,000 or over shall be prepared entirely in the Court's office subject to the condition that only translations shall be made by the Appellant's Advocate, the examination of such translations being done on the fee system by a separate panel of Examiners (to be known as the "Above" panel) appointed by the Court for this purpose.

Such Paper-books must be prepared within the period specified in Rule 39. Delay on the part of Editors and Examiners of Translations will be no excuse for extending the time. But such delays will be reported immediately on their occurrence to the Registrar by the office for necessary orders, and the Registrar may then, in proper cases, extend the time for the preparation of the Paper-Books.

51. The estimate for the preparation of the Paper-books in such Appeals shall be prepared in accordance with the particulars in Rule 47 above, except that—

- (i) For "eight annas" in clause (e) should be read "ten annas";
- (ii) For "24 copies" in clause (g) should be read "64 copies";
- (iii) For "Re. 1-2 per page" in clause (g) should be read "Re. 1-3 per page";
- (iv) For "annas two per page" in clause (h) should be read "anna one per page".

The entire estimated cost shall be deposited with the Accountant of the Court and from such deposit the Court's office will keep the undertaking Advocate supplied with funds to carry on the work of preparation of the Paper-book. When the Paper-book is prepared and filed it shall be finally taxed by the Registrar.

52. Paper-books for the use of the High Court in such Appeals shall be printed and edited in accordance with the directions in Rule 48 above, with the additional direction that the printing of each separate document and exhibit shall begin on a separate sheet.

53. (a) There shall ordinarily be printed and filed in the Court's office 64 copies of the Paper-book, 24 copies of which shall be bound copies for the use of the High Court and 40 unbound copies, the latter being filed in a sealed cover and kept in safe custody in the Paper-Book Department for use in the event of a Privy Council Appeal being filed. Provided that the Registrar may, when necessary, direct a larger number of Paper-books to be printed.

(b) Of the 24 bound copies 10 copies shall be retained for the use of the Court and the remaining 14 copies distributed to the Appellant and the Respondent in the proportion laid down in Rule 49.

54. The printing of Paper-books in such cases will be done only by the presses approved by the Court, a list of which shall be maintained in the Court's office. The Advocate concerned will be free to select any press from this approved list of presses, but instances of indifferent work, delay, etc., in the printing of Paper-books by any such press shall be brought immediately to the notice of the Registrar, who may direct the removal of the press or presses concerned from the list or pass such order or orders as to him seem proper.

D—Analogous Appeals from Original Decrees and Orders, some valued under, and some at or over, Rs. 10,000.

55. In analogous Appeals from Original Decrees and Orders some of which are valued below and some at Rs. 10,000 or above, all the Appeals shall be treated as Appeals valued at Rs. 10,000 or above, for the purpose of the preparation of the Paper-books,

unless on a verified petition duly filed, the Advocate for any party obtains orders of the Registrar for relaxing the Rule in any particular case.

Part III—Appeals from Appellate Decrees.

56. The Paper-books in all Appeals from Appellate Decree will consist of the following papers:—

- (a) The judgment of the first Court;
- (b) The judgment of the lower appellate Court;
- (c) Any judgment or orders of remand passed in the case either by the lower appellate Court in Appeal or by the High Court on Second Appeal;
- (d) The Memorandum of Second Appeal;
- (e) A front leaf containing the number of the cause; the names of the Judges of the two Courts below; the names of the parties and of their Advocates; the date of the institution of the suit; the date of the judgment of the first Court; the date of the judgment of the lower appellate Court; the date on which the Appeal was filed and the date on which the Appeal was decided.

NOTE (1).—The Advocate for the Appellant shall, before the hearing of the Appeal, serve on the Advocate for the Respondent a typewritten copy, or a typewritten copy of the translation, as the case may be, of any document, other than those mentioned above, which he considers necessary for the decision of the Appeal, and shall also provide two such typewritten copies, or typewritten copies of the translation, for the use of the Division Court. If he fails to do so, he shall not refer to such document at the hearing, and no adjournment of the hearing of the Appeal will be granted on this account, unless the Court otherwise directs.

NOTE (2).—If, in any Second Appeal, the Bench at the time of the preliminary hearing under Order XLI, Rule 11, Civil Procedure Code, or the Advocate for the Appellant, desires that translations of the complaints or written statements should be prepared, the Advocate for the Appellant shall, before the hearing of the Appeal, serve on the Advocate for the Respondent typewritten copies of the translations of such complaints or written statements, and shall also provide two such typewritten copies for the use of the Division Court.

57. Except as otherwise provided in these Rules, in each case of Second Appeal, including Appeals under Chapter X of the Bengal Tenancy Act, the Registrar shall cause to be prepared at the cost of the parties six typewritten copies of the Paper-book as aforesaid.

58. In the case of Second Appeals not exceeding Rs. 50 in value, other than Appeals under Chapter X of the Bengal Tenancy Act, and in Second Appeals from Orders (including orders under Section 47, Civil Procedure Code) irrespective of the value of such Appeals, and in Appeals from Remand Orders under Order XLI, Rule 23, Civil Procedure Code, in which the valuation of the Appeal does not exceed Rs. 50, the Registrar shall cause to be prepared three typewritten copies of the Paper-book as aforesaid for the use of the Judges and the Advocate for the Deputy Registrar, if any, and no charge shall be levied from the parties on account of the preparation of such Paper-books. If there is no Advocate on behalf of the Deputy Registrar representing any minor, then the spare copy of the Paper-book (third copy) may be sold at Rs. 3, if the Appellant or the Respondent desires to purchase the same.

59. In the case of Appeals from Appellate Decrees and Appeals from Remand Orders under Chapter XLI, Rule 23, Civil Procedure Code, in which the valuation of the Appeal exceeds Rs. 50 and in all Appeals under Chapter X of the Bengal Tenancy Act (irrespective of value), the Appellant shall within 30 days from the date of the registration of the Appeal, deposit the sum of Rs. 10. Upon registration each Appeal shall be entered in a list in form No. 14 (civil), page 187, Appendix I, which will be displayed outside the Appeal Section concerned and a copy of this list shall be sent to the Bar Association's Library. This shall constitute sufficient notice of the date of registration. The Respondent shall at the time of entering appearance deposit the sum

of Rs. 5 in full payment of the cost of the preparation of typewritten Paper-books.

Upon the Appellant depositing the sum of Rs. 10 aforesaid, the Registrar shall cause to be prepared six typewritten copies of the Paper-book in accordance with Rule 56 in the Court's office. Two of these six copies will be for the use of the Court, two for the Appellant (to be used at the preliminary hearing and at the final hearing), one for the Respondent and one spare. After admission, as the Respondent or separate sets of Respondents enter appearance, through different Advocates, they will be charged at the rate of Rs. 5 for each copy of Paper-book supplied. The Appellant shall supply a copy of the Paper-book to the Advocate for the Deputy Registrar, if there is a minor Respondent represented by the latter, out of the two copies supplied to him as aforesaid, or by purchasing an additional copy at the rate of Rs. 5.

Provided that in Appeals from Appellate Decrees in which there was an order of remand passed by the lower appellate Court and in which the previous judgments (original and appellate) will have to be included in the Paper-book, the charge for the Paper-book to the Appellant will be Rs. 12 instead of Rs. 10 and to the Respondent Rs. 6 instead of Rs. 5 as in other cases.

No refund of the deposit mentioned above will be allowed on the ground that Paper-books were not ready at the hearing of the Appeal under Order XLI, Rule 11, Civil Procedure Code, in cases fixed by the Court, on the application of the Appellant, before the Appeal has been placed on the Weekly List.

This Rule shall also govern all cases in which deposits have been made before the date it comes into force.

59A. In accordance with the preceding Rule, the Registrar shall serve two copies on the Advocate for

the appellant and shall include the case for hearing under Order XLI, Rule 11, C.P.C. If the appeal is admitted under Order XLI, Rule 11, C.P.C., the Advocate for the appellant shall be served with a notice in Form No. 25 (Civil) calling upon him to return his copies of the paper book for being examined with the original record and shall return the said copies for the said purpose within three days of the receipt of the said notice.

(No. 42, Notification No. 11991G., dated the 14th September, 1937.)

60. In case of batches of analogous Appeals of the classes mentioned in Rule 59 (*i.e.*, all Appeals from Appellate Decrees, Appeals from Remand Orders under Order XLI, Rule 23, Civil Procedure Code, in which the valuation of the Appeal exceeds Rs. 50 and all Appeals under Chapter X of the Bengal Tenancy Act), the Appellant shall, within 30 days from the registration of the Appeal, deposit in full payment of the cost of preparation of typewritten Paper-books a sum of Rs. 10 for the first Appeal, the charge for the analogous Appeals being Re. 1-8 per Appeal up to four such Appeals and annas 12 for every such Appeal in excess of four, the additional charge not exceeding Rs. 10 in any case. Upon registration each Appeal shall be entered in a list which shall be displayed outside the Appeal Section concerned and a copy of this list shall be sent to the Bar Association's Library. This shall constitute sufficient notice of the date of registration.

In such cases the Respondent on entering appearance shall deposit Rs. 5 for the First Appeal, and half the charge prescribed for the Appellant in respect of the analogous Appeals, the additional charge not exceeding Rs. 5 in any case. The principle of this Rule will apply to each set of Respondents who enter appearance through separate Advocates.

NOTE.—In a case in which some of the analogous Appeals are above Rs. 50 in value and some below Rs. 50 in value the principle of the above Rules shall apply to the whole batch.

61. Where analogous Appeals have been presented in separate batches each batch of such Appeals presented by the same Appellant, or by the same Advocate representing different Appellants, shall be considered as a separate batch of analogous Appeals and the cost of preparation of the Paper-book shall be deposited for each batch of such Appeals separately calculated according to the provisions of Rule 60.

In the case of single Appeals presented by different Advocates, or Appellants in person, such cost shall be deposited as provided in Rule 59 for each such separate Appeal, notwithstanding that such Appeals may be analogous to others.

62. If in a Second Appeal above Rs. 50 in value an Advocate desires to move the Court for an order for stay of execution in the lower Court under Order XLI, Rule 5, Civil Procedure Code, on the same day that an Appeal is filed, and if the Appeal is in order and is accepted by the Stamp Reporter, the Advocate shall provide a copy of the Memorandum of Appeal with annexures for the use of the 2nd Judge at the preliminary hearing. If such Appeal is admitted under Order XLI, Rule 11, Civil Procedure Code, the sum of Rs. 10 or Rs. 12 shall be deposited (as required by Rule 59), but if the Appeal is dismissed no such deposit need be made.

63. No work in the matter of the preparation of the Paper-book shall be undertaken until the deposit required under the provisions of Rule 59, has been made by the Appellant, unless the Registrar shall otherwise direct.

64. In case of the Appellant or the Respondent failing to make the necessary deposit under Rule 59, the Officer in charge of the Judicial Department shall lay the matter before the Registrar who may at once cause the Appeal to be set down before the Division Court for orders. If the Appellant or the Respondent fails to satisfy the Court as to the delay, the Appeal

may be dismissed for want of prosecution, or may be decreed *ex parte*, as the case may be, or the Court may pass such other order as it may deem proper.

65. Additional Paper-books over and above those which may be supplied to the parties under Rule 59 shall be charged for at the rate of Rs. 5 per copy.

66. When a case is ready for hearing the Officer in charge of the Judicial Department shall include it on the General Warning List in form No. 15 (civil), page 187, Appendix I, a copy of which shall be displayed on the notice board of the Appeal Section concerned, and a copy sent to the Bar Association's Library for information. This will be considered as sufficient notice to the Advocate concerned that the case is ready for hearing.

Part IV—Appeals from Orders.

67. The Rules for the preparation of Paper-books in Appeals from Original Decrees valued under Rs. 10,000 or valued at Rs. 10,000 or more, shall apply, respectively, to every First Appeal from an Order of the like value (including an Order under Section 47, Civil Procedure Code), passed by a Subordinate Court not being an Order under Order XLI, Rule 23 of the same Code, with the following modifications:—

(A) That Part I of the Paper-book shall contain the following papers:—

- (a) The order-sheet;
- (b) The application or proceeding on which the order appealed from was passed;
- (c) The petition, if any, filed in answer;
- (d) The order appealed from;
- (e) The Memorandum of Appeal.

In this Part shall also be included the following papers when their inclusion is necessary for the purpose of the Appeal, provided that the Registrar may,

upon application being made to him, direct that any paper or part of a paper shall not be included in this Part:—

(a) The evidence, oral or documentary, which may have been taken or put in with reference to the application or proceeding, and which is necessary for the decision of the Appeal;

(b) Any other papers to which reference may be necessary for the decision of the Appeal.

(B) That the Appellant's list shall be delivered to the Officer in charge of the Judicial Department within one week after the service of notice of the arrival of the record.

(C) That the Respondent's List shall be delivered to the Officer in charge of the Judicial Department within one week of the service upon him of notice of the filing of the Appellant's List.

(D) That the declaration signed by the Appellant himself required by Rule 34 of this Chapter shall be filed with the Officer in charge of the Judicial Department within one week after admission of the Appeal under Order XII, Rule 11 of the Civil Procedure Code.

68. (1) In Second Appeal from Orders (including Orders under Section 47, Civil Procedure Code), irrespective of the value of such Appeals, and in Appeals from Remand Orders under Order XII, Rule 23 of the same Code, in which the valuation of the Appeal does not exceed Rs. 50, the Paper-book shall consist of—

(a) The judgment or judgments of the lower Court or Courts;

(b) The Memorandum of Appeal to the High Court;

(2) The Registrar shall cause three typewritten copies of the Paper-book, as aforesaid, to be prepared.

(3) No charge shall be levied from the parties for the preparation of the Paper-book.

69. In Appeals from Remand Orders under Order XLI, Rule 23, Civil Procedure Code, in which the valuation of the Appeal exceeds Rs. 50, the Paper-book shall be prepared and supplied to the parties in accordance with the Rules relating to the preparation of Paper-books in Appeals from Appellate Decrees in which the valuation of the Appeal exceeds Rs. 50.

Part V—Full Bench References.

70. No charge shall be levied from the parties for the preparation of the Paper-books in full Bench Reference cases.

71. In every case 30 copies of the referring judgment shall be printed. The additional number of copies, if any, of the Paper-book in the Appeal which will be required for the hearing of the reference will be determined by the Registrar upon a report from the office as to the number already available.

72. Parties will not be entitled to any free copies of the referring judgment. Copies may, however, be purchased by the parties or their Advocates (including copies for the Advocates for the Deputy Registrar in the case of minor Respondents) at the rate of six annas per page subject to a maximum charge of Rs. 7-8 for each case. If additional copies of printed Paper-books in the Appeal are required by the parties for the Full Bench Reference they shall be purchased at the above rate, the maximum of Rs. 7-8 being applicable to each volume of such Paper-book.

VI—Appeals under the Workmen's Compensation Act (VIII of 1923) and under the Indian Succession Act (XXXIX of 1925).

73. The preparation of paper books in appeals under the Workmen's Compensation Act (VIII of 1923) and under the Indian Succession Act (XXXIX of 1925) shall be governed by the following Rules:—

74. (a) On receipt of the record from the lower court the Officer-in-charge of the Judicial Department shall serve a notice on the Advocate for the appellant informing him of the arrival of the record and calling upon him to prepare and file within seven days of the service of such notice a list of the papers which he considers to be necessary for the decision of the appeal.

(b) If the respondent enters appearance within the time allowed for such appearance, the Officer-in-charge of the Judicial Department shall serve a notice calling upon him to inspect the list filed by the appellant and state within seven days of such service whether he wishes any other papers to be included in the paper-book of the case:

Provided that the Registrar may for good and sufficient reason extend the time allowed under the foregoing sub-rules by such periods, not exceeding seven days as to him may seem proper.

75. If the respondent considers that any paper or portion of a paper which ought to have been inserted in the appellant's list under the provisions of rule 74(a) has been omitted therefrom he may, within the period specified in Rule 74(b), and after giving notice to the appellant of his intended application, apply to the Registrar for an order that such paper or portion of a paper be inserted in the paper book of the case:

Provided that if any such application by a respondent is disallowed by the Registrar, such respondent shall be at liberty at that time to pray for the inclusion of the papers mentioned in his application in a paper book to be prepared by him at his own cost:

Provided also that if the respondent has entered appearance out of time he shall not be permitted to pray for the inclusion in, or exclusion from, the appellant's list of any papers whatsoever if such application

be not made before the actual preparation of the paper book has commenced.

76. If one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included and the Registrar allows the document to be included, the order book and list shall clearly indicate the fact that, and the party by whom, the inclusion of the document was objected to.

77. The Registrar as well as the parties and their legal agents shall endeavour to exclude from the paper book all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal, and generally, to reduce the bulk of the paper book, as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents.

NOTE 1.—Ordinarily a long series of documents, such as accounts, rent-rolls, inventories, etc., should not be printed in full; but the parties or their legal agents should agree to short extracts being printed as specimens.

NOTE 2.—Documents produced before the Court of first instance, but not admitted in evidence, shall not be included in the paper book except under the orders of the Registrar obtained upon an application (unstamped) with notice to the opposite party. An Advocate desiring to refer to any such document at the hearing of the appeal before the High Court shall, at any time before the hearing, serve on the Advocate for the opposite party a typewritten copy, or a typewritten copy of the translation, as the case may be, of any such document to which he desires that reference should be made, and shall also provide two such typewritten copies or typewritten copies of the translation for the use of the Court. If he fails to do so he shall not refer to such document at the hearing and no adjournment of the appeal will be granted on this account unless the Court otherwise directs.

78. As soon as the list of papers to be included in the paper book has been settled in accordance with the foregoing rules, the Officer-in-charge of the Judicial Department shall issue a notice on the Advocate

for the appellant calling upon him to prepare type-written paper books in accordance with such list, serve a copy thereof on each of the appearing respondents and file two copies for the use of the Court before the expiry of 21 days from the date of such notice, accompanied by a certificate that copies have been served on all the appearing respondents.

79. If the respondent has under the first proviso to Rule 75 of this Chapter been allowed to prepare a separate paper book at his own cost, he shall be called upon to serve upon the appellant a copy of such paper book and to file two copies for the use of the Court within the time allowed to the appellant as aforesaid.

80. Every paper book, whether prepared by the appellant or the respondent, shall contain at the end of it a cost sheet prepared in accordance with Rule 47 of this Chapter, save that no charge shall be made for 'estimating' and 'taxing'.

81. As soon as the requirements of the preceding rules have been complied with and the appeal is otherwise ready for hearing, the Officer-in-charge of the Judicial Department shall include the case on the General Warning List in Form No. 15 (Civil), page 187, Appendix I, a copy of which shall be displayed in the manner prescribed in Rule 66 of this Chapter. This will be considered sufficient notice to the Advocates concerned that the case is ready for hearing. Where, however, any party has not entered appearance through an Advocate such notice shall be served upon him by registered post.

(No. 44, Notification No. 11991G., dated the 14th September, 1937).

CHAPTER X.

APPLICATOINS FOR REVIEW OF JUDGMENT.

1. The provisions of Chapter IV shall apply, so far as may be, to every application for review.

2. Every application for review of judgment shall set forth plainly and concisely the grounds on which review is sought, and shall contain a certificate by an Advocate of the Court similar, *mutatis mutandis*, to that prescribed in Appeals from Appellate Decrees (*See* Chapter V, rule 6).

3. Every applicatioin for review shall be accompanied by a certified copy of the judgment or order complained of, and of the decree, if necessary; and when the application proceeds on the ground of a discovery of fresh evidence, certified copies of the documents, if any, relied upon, shall be annexed to the application, together with an affidavit setting forth the circumstances under which such discovery has been made.

4. Every application for review of judgment shall be presented to the Stamp Reporter, who will certify thereon whether the petition is in due form, within time, and properly stamped, or that it is irregular, and shall return the petition with such certificate.

5. Within seven days of the return of the application by the Stamp Reporter, the applicant, either in person or by an Advocate, shall present the application by way of motion in open Court to the Division Court of whose judgment a review is sought; or, if the Judges of such Division Court be not sitting together, to the senior of such Judges who may be then attached to the Court and present.

6. If an application for review of a judgment cannot be heard in the manner provided in Order XLVII, rule 5, Civil Procedure Code, such application shall be presented by the applicant or his Advocate

with the certificate of the Stamp Reporter, as required by rule 4, to the Chief Justice, who shall provide for the hearing of the application.

7. No copy of a decree or judgment presented or filed with an application for review which has been granted shall be returned. No affidavit accompanying an application for review shall be returned, whether such application has been granted or not.

8. If notice is issued to the other side, the applicant for review shall, before hearing, file a duplicate typed copy of the following documents:—

(i) The judgment or order complained of, and the decree, if necessary.

(ii) Any affidavit filed with the application.

(iii) Any affidavit in reply.

(iv) When the application proceeds on the ground of a discovery of fresh evidence, the documents, if any, relied upon, together with an affidavit setting forth the circumstances under which such discovery has been made.

NOTE.—Applications for copies of the documents mentioned above shall be governed generally by the rules contained in Chapter XIII.

Part III.

CHAPTER XII.

FEES AND COSTS.

A—Process-fees.

1. The fees in the following schedule framed by the High Court under section 20 of the Court-fees Act, 1870, shall be charged for serving and executing processes issued by the High Court in its Appellate Jurisdiction:—

(I) *Fees chargeable in the High Court, Appellate Jurisdiction.*

Proper fees.

Rs. A. P.

Art. 1.—In every case in which personal or substituted service of any process on parties to the cause, or any persons who are not parties, is required, where not more than four persons are to be served with the same documents, *one fee* 3 0 0

When such persons are more than four in number, then the fee abovementioned, and an additional fee of 8 annas for every such person in excess of four 0 8 0

Provided that in the last mentioned case, where such persons reside in the same or immediately adjacent villages, the additional fee may be such sum, not exceeding the amount of the fee prescribed, as the High Court may, in the particular case, determine.

Provided also that in analogous cases where the appellant is the same but the respondents are different but reside in the same or immediately adjacent villages, the same rule shall apply.

Notwithstanding anything contained in the proviso to this Article, no prayer for reduction of the fee prescribed and determined by the High Court shall be considered unless it is made within the time laid down for the deposit of the fees for the issue of notice and sufficiently early to obtain an order before that time expires.

No prayer for the acceptance of one process fee for the service of notices both in an Appeal and a connected Rule, or in two or more analogous Appeals, shall be considered unless written up notices both in that Appeal and in the connected Rule or in the two or more analogous Appeals are filed at the time the prayer is made and can be served simultaneously.

Art 2.—For the execution of a warrant for arrest of a person 3 0 0

Proper fees.

Rs. A. P. -

Art 3.—For service or execution of any process
issued by the Court, not specified in any
preceding article 3 0 0

2. Notwithstanding Rule 1, no fee shall be chargeable for serving or executing—

- (1) any process, such as a notice, rule, summons, or warrant of arrest, which may be issued by any court of its own motion, solely for the purpose of taking cognizance of and punishing any act done or words spoken in contempt of its authority or of taking action under secs. 195 and 476 of the Criminal Procedure Code (1898);
- (2) any process issued a second time in consequence of an adjournment made otherwise than at the instance of a party or an intervenor;
- (3) any copy of summons, notice, order, proclamation or other process, posted in a court house or in the office of the Collector;
- (4) any order intimating postponement of sale, withdrawal of attachment or directing restoration of attached property to the person in whose custody it was or its replacement where it was found at the time of seizure;
- (5) any order directing an officer in charge of a jail to detain or to release a person committed to his custody .

3. The fees hereinbefore provided, except those mentioned in the next rule, shall be payable in advance at the time when the petition for service or execution is presented, and shall be paid by means of stamps affixed to the petition in addition to the stamps necessary for its own validity.

4. In the localities only where and for the periods during which travelling except by boat is in the opinion of the District Judge impracticable, the fees chargeable for the service of processes shall be increased by such percentage, not exceeding 25 per cent., as may be necessary to cover the additional cost of boat-hire or ferry-toll for journey in watery areas. The percentage of surcharge over the fees ordinarily leviable should be reduced when the realisation of the higher amount is found to exceed the additional cost incurred.

5. (1) In the localities which are not for the time being subject to rule 4, when, in order to the service of any process, the peon has to cross a ferry, then the amount, if any, legally exigible as toll shall be paid by the court executing such process from its permanent advance.

(2) The permanent advance mentioned in this rule is the special permanent advance sanctioned by the local Government for the purpose of the rules.

6. Processes and rules intended for service in the town of Calcutta shall be sent direct to the Sheriff, and parties shall not be required to pay into the High Court process-fees in respect of such processes and rules by stamps, as required by the Rules issued by the High Court under clause (i) of section 20 of the Court-fees Act. Such processes and rules shall be prepared and made over to the parties, or to their pleaders, for delivery to the Sheriff for service, and must be delivered to him accompanied by his authorised fees and charges.

NOTE.—The fees paid in pursuance of the foregoing rules must in all proceedings be deemed and treated as part of the necessary and proper costs of the party who pays them.

B—Other Fees.

7. The following fees shall be charged on every application made in respect of the following matters,

and such fees shall be paid by means of Court-fee stamps affixed to such application:—

Rs. A. P.

For every search in the offices, record-room, books or registers of the Court, including searches consequent on applications for inspection, for information, for copies of documents, and for return of documents or applications made by parties for records or documents under Order XIII, rule 10, Civil Procedure Code	1	0	0
Provided that no searching-fee shall be charged in respect of applications for inspection, information, copies, or return of documents filed by parties to an appeal or other proceeding if the records of such appeal or proceeding have not been deposited in the record-room.			
On each application for a copy of any document or record in the High Court, whether the copy applied for is of a single document or more documents than one	0	2	0
Provided that this does not authorise an applicant to ask in a single application for copies of more than one paper, if required in more than one case. There must be a separate application, and, therefore, a separate stamp, for each case.			
For swearing or affirming every affidavit, whether intended to be used in the High Court either in its Original Jurisdiction or its Appellate Jurisdiction, or in any other Court, except the Insolvency Court	2	0	0
For inspection of records (exclusive of any searching-fee leviable under this rule)—			
(i) If an application is by a party to the appeal or other proceeding	1	0	0
(ii) If the application is not by a party to the appeal or other proceeding	5	0	0
Provided that no fee shall be levied from parties to appeals or other proceedings in the Court, or their Advocates, for inspecting the records of such appeals or proceedings if the records relating thereto have not been deposited in the record-room of the Court.			

NOTE 1.—The Chief Reporter to Government and the Superintendents and Remembrancers of Legal Affairs to the

Local Governments are exempted from payment of the searching-fees and inspection-fees referred to above.

NOTE 2.—The Editors of the *Calcutta Weekly Notes* and the *Calcutta Law Journal* and the Editors of such other Law Journals (if any) as may be approved by the Court from time to time are exempted from payment of the searching fee referred to above, provided that the application for copy is filed in accordance with the Rule 12, Chapter XIII within seven days of the date of the disposal of the case.

NOTE 3.—Where the fee for swearing or affirming an affidavit has been levied, no fee shall be levied for filing the same, provided that this exemption shall not apply to the fee payable on the Original Jurisdiction for filing documents annexed to affidavits.

NOTE 4.—*Fees for taking affidavits or affirmations.*—Unless otherwise ordered, the fees to be allowed to Commissioners deputed for taking affidavits or affirmations at any place other than the Court house, shall be as follows:—

For the first affidavit, oath or affirmation, where			
within the limits of Calcutta	16	0	0
Where beyond the limits of Calcutta and within			
5 miles	32	0	0

8. Except as otherwise specially provided in these Rules, the following translation fee shall be charged in cases where a party to any suit or appeal, or his Advocate, or when a lower court requires a document to be translated by a salaried Translator of the Court:—

One anna for every 3 words for documents written			
in a language other than the vernaculars of Bengal			
and Assam and for every 5 words for other documents (three figures being counted as one word)			
subject to a minimum charge of	2	0	0

NOTE.—When a party to any suit or appeal or his Advocate or when a lower court, requires a document to be translated by a salaried Translator of the Court within a special time, the Registrar may, after satisfying himself that the work cannot be done during office hours without detriment to the current translation work of the Court, allow the work to be done after office hours on payment in cash, in addition to the usual fee prescribed above, of an extra fee calculated at one anna for every 6 words for documents written in a language other than

the vernaculars of Bengal and Assam and for every 9 words for other document, on account of remuneration of the Translator doing the work, subject to a minimum charge of Re. 1.

C—Costs.

9. The following scale of costs shall ordinarily be allowed to the successful party in appeals to the High Court in its Appellate Jurisdiction:—

Second Appeals.

		Rs.
Not exceeding Rs. 200	{ Drawing grounds of appeal .	4
	{ Hearing free . . .	16
Exceeding Rs. 200 and not exceeding Rs. 1,000.	{ Drawing grounds of appeal .	12
	{ Hearing-fee . . .	32
Exceeding Rs. 1,000, and not exceeding Rs. 5,000.	{ Drawing grounds of appeal .	12
	{ Hearing-fee . . .	48

Appeals from Original Decrees.

Not exceeding Rs. 5,000	To be fixed by the Court.	
Exceeding Rs. 5,000 and not exceeding Rs. 10,000	{ Drawing grounds of appeal .	50
	{ Hearing-fee . . .	300
Exceeding Rs. 10,000 and not exceeding No. 20,000.	{ Drawing grounds of appeal .	50
	{ Hearing-fee . . .	500
Exceeding Rs. 20,000 and not exceeding 50,000.	{ Drawing grounds of appeal .	100
	{ Hearing-fee . . .	750
Exceeding Rs. 50,000 .	{ Drawing grounds of appeal .	100
	{ Hearing-fee . . .	1,000

Appeals from Orders.

Not exceeding Rs. 5,000	Same as Second Appeals.	
Exceeding Rs. 5,000	{ Drawing grounds of appeal .	16
	{ Hearing fee . . .	64

Reviews.

[Where notice is given and opposite party appears.]

The same costs as were allowed upon the hearing in Second and Miscellaneous Appeals.

In Appeals from Original Decrees the costs to be fixed by the Court.

Appeals under section 15 of the Letters Patent.

The same costs as were allowed at the previous hearing.

Applications.

[Where notice is given and opposite party appears.]

To be fixed by the Judge or Judges who hear the application.

General Rules.

When there are several parties to an appeal, review, or application, one set of costs will generally be awarded, unless the Court, upon the application of the parties, shall otherwise order.

10. In cases where, on appeal to the High Court from an Original or Appellate Decree an order of remand is passed, the court-fee paid on the Memorandum of Appeal shall ordinarily be treated as costs in the appeal. But where an order of remand is made on any of the grounds mentioned in the first schedule, Order XLI, rule 23 of the Civil Procedure Code, for a second decision by the Lower Court, this Court shall, on the verbal application of either party made at the time of making the order for remand, make an order authorising the appellant to receive back from the Collector the full or proportionate amount, as the case may be, of the fee paid on the Memorandum of Appeal as provided in section 13 of the Court-fees Act VII of 1870.

Any such application for refund not made at the time of the passing of the order of remand, but made on a subsequent date, may be entertained if made to the Court on a petition for amendment of the order of remand with the proper stamp.

Form No. 1 (Civil).

Rule 31, Chapter V.

*Notice to Lower Court under O. 41, r. 13, Civil Procedure Code,
when Respondent resides in Calcutta.*

No.

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

CIVIL APPELLATE JURISDICTION.

APPEAL FROM	No.	OF 19	.
<i>Filed on</i>		19	.
No.	of 19	of the Court of the	
		<i>Appellant,</i>	
	<i>versus</i>		
		<i>Respondent.</i>	

Whereas the abovementioned appeal has been preferred to
this Court against the _____ of the Court of the
_____ in the abovementioned
_____, and whereas the _____ day of
19 _____ has been fixed for hearing of the said appeal in this
Court:

It is ordered that notice of the said appeal do issue out of,
and under the seal of, this Court directed to the abovenamed
respondent requiring _____ to appear therein:

And it is further ordered that the said notice be forwarded
to the Sheriff of Calcutta for service on the said respondent upon
payment to him by the Advocate of the appellant of his usual fees
and charges, and that the said Sheriff do submit to this Court
his return of service thereof without delay:

And it is further ordered that the said _____
do, within one week from the receipt by him of this
order, transmit to this Court the record connected with the
case:

And it is further ordered that copies of this order be for-
warded to the said Sheriff and to the said _____ for their
information and guidance.

Dated this _____ day of _____ in the year of Our
Lord One Thousand Nine Hundred and _____

Deputy Registrar.

Form No. 2 (Civil)
Rule 31, Chapter V.

Notice to Lower Court under O. 41, r. 13, Civil Procedure Code,
 • *when Respondent resides elsewhere than in Calcutta*

No.

IN THE HIGH COURT OF JUDICATURE AT FORT
 WILLIAM IN BENGAL.

CIVIL APPELLATE JURISDICTION.

APPEAL FORM	No.	OF 19	.
<i>Filed on</i>		19	.
No.	of 19	of the Court of the	
		<i>Appellant,</i>	
		<i>versus</i>	
			<i>Respondent.</i>

Whereas the abovementioned appeal has been preferred to this Court against the _____ of the Court of the _____ in the abovementioned _____, and whereas the necessary process-fee has been paid by the appellant, and whereas the day of _____ 19 _____ has been fixed for the hearing of the said appeal in this Court:

It is ordered that notice of the said appeal do issue out of, and under the seal of this Court directed to the abovenamed respondent requiring to appear therein:

And it is further ordered that the said notice be forwarded to the _____ for service on the said respondent after realising from the abovenamed appellant the additional fees, if any, for boat-hire or ferry-toll, exigible under Rule (4) of the Rules framed by the High Court under clause (i) of Section 20 of the Court-fees Act, VII of 1870, and that the said _____ do submit to this Court his return of service thereof without delay:

And it is further ordered that the said _____ do, within one week from the receipt by him of this order, transmit to this Court the record connected with the case.

Dated this _____ day of _____ in the year of Our Lord One Thousand Nine Hundred and _____

Deputy Registrar.

Form No. 3 (Civil).

Rule 35, Chapter V.

*Notice to Respondent, under O. 41, r. 14, Civil Procedure Code,
of the day fixed for hearing of appeal.*

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

APPEAL FORM No. OF 19 .
Valued at Rs. .
APPEAL FORM THE OF THE COURT OF THE
OF DATED THE OF 19 .
Appellant,
versus
Respondent.

To

Take notice that an appeal from the of the
of in this case has been presented by
Advocate for the abovementioned appellant, and registered in this
Court; and that the day of 19 (corre-
sponding with the of 13) has been
fixed by the Court for the hearing of the appeal.

If no appearance is made on your behalf, by yourself, your
Pleader, or by some one by law authorised to act for you in this
appeal, it will be heard and decided *ex parte* in your absence.

Signed and Sealed by order of the Court this
day of 19 .

Deputy Registrar.

Form No. 4 (Civil).

Rule 43 (Note), Ch. V.

High Court,
Appellate Jurisdiction.

Calcutta, the.....193 .

To

The.....
Reference.....

Your post card, dated....., regarding non-payment of boat
hire for service of notice in the above matter.

Advocate for party concerned instructed to see that boat-hire is depo-
sited in your Court by..... Please alter the date of hearing in
the High Court notice to.....and submit return of
service by.....

Deputy Registrar.

Form No. 5 (Civill).

Rule 74, Chapter V.

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

CIVIL APPELLATE AND REVISIONAL JURISDICTION.

CIVIL,

No.

OF 19 .

*Appellants,
Petitioners,*

versus

*Respondents,
Opposite party.*

We direct that

Formal order follows.

(Sd.)

(Sd.)

Dated the

19 .

Judges.

Memo. No.

Copy forwarded to

of

for information and necessary action.

By order of the High Court,

*Deputy Registrar.**Assistant Registrar.*

HIGH COURT:

CIVIL APPELLATE JURISDICTION,

The

19 .

Form No. 6 (Civil).
Rule 15, Chapter VI.

Notice for Grant of Certificate.

Notice under O. XLV, R. 3 (2), C. P. C.

N.

P. C. A.

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

(Appellate Civil Jurisdiction.)

Application for leave to appeal to His Majesty in Council.

No.

of 19

(Appeal from

Decree No.

of 19 .)

Petitioners to England.

versus

Opposite Part .

To

The abovenamed Opposite Part .

Take notice that the abovenamed Petitioners to England have applied to this Court for a certificate that, as regards amount, or value and nature, the above case fulfils the requirements of section 110 of the Code of Civil Procedure, 1908, or that it is otherwise a fit one for appeal to His Majesty in Council.

The day of 19 is fixed for you to show cause why the Court should not grant the certificate asked for.

Given under my hand and the seal of the Court this day of 19 .

এতদ্বারা জানান যাইতেছে যে উপরোক্ত বিলাত আপিলের দরখাস্তকারী উপরোক্ত মোকদ্দমার তায়দাদ ও প্রকৃতি সম্বন্ধে সন ১৯০৮ সালের দেওয়ানী কার্যবিধি আইনের ১১০ ধারায় বাহা আবশ্যক তাহা এই মোকদ্দমায় প্রতিপালিত হইয়াছে এই সম্বন্ধে কিংবা মঞ্জীসভাধিষ্ঠিত সম্রাট বাহাদুরের সমীপে আপিলের জন্ত অন্ত প্রকারে যোগ্য থাকার এক সার্টিফিকেট পাওয়ার জন্ত আদালতে দরখাস্ত করিয়াছে।

আদালত এই প্রার্থিত সার্টিফিকেট কেন না দিবেন তোমাকে তাহার কারণ দর্শাইবার জন্ত সন ১৯ সালের দিন ধার্য হইল।

আমার স্বাক্ষর ও আদালতের মোহরযুক্তমতে অতঃ সন ১৯ সালের তারিখে দেওয়া গেল।

Deputy Registrar.

Form No. 7, (Civil).
Rule 8, Chapter VIII.

Notice Form
in
Letters Patent Appeals.

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

CIVIL APPELLATE JURISDICTION.

NOTICE.

Appeal No. of 19 under section 15 of the Letters Patent
in

Appeal from No. of 19 .

Appellant

versus

Respondent

To

Take notice that the abovementioned Appeal under section 15 of the Letters Patent has been filed in this Court on behalf of the abovenamed appellant by his Advocate

from the judgment of Mr. Justice sitting singly, passed in the above-mentioned Appeal from Appellate Decree and dated the of 19 ; that it has been set down for hearing on the day of 19 , and that it will be heard on that date or as soon thereafter as the business of the Court will permit.

Dated this day of 19 .

Deputy Registrar.

Form No. 8 (Civil).
Rule 8, Chapter VIII.

Notice Form
in
Letters Patent Appeals.

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

CIVIL APPELLATE JURISDICTION.

NOTICE.

Appeal No. of 19 under section 15 of the Letters
Patent arising from difference of opinion

in

Appeal from Decree No. of 19 .

Appellant

versus

Respondent

To

Take notice that the abovementioned Appeal under section 15
of the Letters Patent arising from difference of opinion between
The Hon'ble Mr. Justice and the Hon'ble Mr.
Justice has been filed in this Court on behalf of
the abovenamed appellant by his Advocate on the
of 19 ; that it has been set down for hearing on the
day of 19 ; and that it will be heard
on that date or as soon thereafter as the business of the Court
will permit.

Dated this day of 19 .

Deputy Registrar..

Form No. 9 (Civil).

Rule 5, Chapter IX.

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL.*Detailed statement of cost incurred in the preparation of the Paper-book*
*in**Appeal from Original Decree|Order No. ———— of 19 .*
*Appellant,**versus**Respondent.*

Items of cost incurred by the Appellant Respondent.	Costs claimed.		Costs passed by the Taxing Officer.	
	Rs.	a.	Rs.	a.
Estimating words at 10,000 per rupee .				
Estimating maps-photos				
Examining words of manuscript at 1,200 words per rupee .				
Editing pages at ten annas per page if the Paper-book is printed, and at five annas per page if a type Paper-book is prepared .				
Editing maps-photos .				
Taxing pages at one two annas per page .				
Postal charges for service of— .				
Total Government dues .				
Translating words at 150 vernacular words per rupee, three figures being counted as one word				
Examining translations words at 300 vernacular words per rupee, three figures being counted as one word .				
Copying words at 1,200 words per rupee .				
Examining words of manuscript at 1,200 words per rupee .				
Editing pages at eight annas per page if the Paper-book is printed, and at five annas per page if a type Paper-book is prepared .				
Printing 64 24 or preparing 12 type-written copies of the Paper-book (actual charge) .				
Lithographing, editing and tracing maps (actual charge)				
Cost of photos including editing (actual charge) .				
Total .				

Rupees

Court Editor.
Dated the 19 .

Advocate (who has filed the Declaration under Rule 34, Chapter IX, Appellate Side Rules).

Assistant Registrar in charge of Paper-books.

NOTICE.

To

Mr.

Advocate for the Appellant|Respondent.

Rs. a.

Total amount deposited by Appellant|Respondent .
 Further amount to be deposited by your client in the above case within two weeks after service of this notice .
 Surplus amounts available for refund to your client in the above case and will be paid upon application duly made to the Registrar
 HIGH COURT, APPELLATE JURISDICTION,
 CALCUTTA.

The ———— 19 .

Ledger Keeper.

Accountant.

Form No. 11 (Civil).
Rule 20, Chapter IX.

RESPONDENTS LIST.

PART I.

(Paper other than those inserted in the Appellant's list, which are relevant to the subject-matter of the appeal, and to which the respondent desires that reference shall be made by the Court at the hearing of the appeal.)

Appeal from Original Decree|Order No.

of 19 .

versus

Appellant,

Respondent.

Under Rule 20/67, Chapter IX, of the Rules of the High Court, Appellate Jurisdiction, this list should be filed by the Respondent within three weeks|one week after service of the notice required by Rule 18, Chapter IX, and should contain the papers to be included, at cost of such Respondent, in the paper-book of the above appeal.

Serial No.	Number on the record.	Description and date of paper.	Whether the whole or portion and, in case of a portion, what portion to be inserted in the paper-book.	Remarks.

PART II.

(The list of exhibits to be inserted in part II of the Paper-book at the expense of the Respondent.)

The list of exhibits should follow the order of the exhibit marks. A correct and full description of such documents must be given

Serial No.	Exhibit mark on the record.	Description and date of document.	Whether the whole or portion and, in case of a portion, what portion to be inserted in the paper-book.	Remarks.

I, Advocate for the Respondent, do hereby certify that I have examined this list with reference to the provisions of Rule 25, Chapter IX, of the Rules of the High Court, Appellate Jurisdiction, and declare that in my judgment it is necessary to include in the paper-book of this appeal every document or portion of a document included in this list in order to arrive at a proper decision of the appeal.

The.....193 .

Signature of Advocate for the Respondent.

Form No. 12 (Civil).
Rule 21, Chapter IX.

Appeal from Original Decree|Order No.

of 19 .

Appellant,

versus

Respondent.

APPEAL VALUED AT RS. —————

Estimates of cost for translating and printing, etc., the papers to be included in Parts I and II of the paper-book of the above appeal, *i.e.*, the papers included in paragraph I of Rule 11|67, Chapter IX of the Rules of the High Court, Appellate Jurisdiction, and the papers as per List filed on behalf of the Appellant.

	Rs.	a.	Rs.	a.
For estimating words at 10,000 words per rupee				
For estimating maps, photos				
For translating words at 150 vernacular words per rupee (three figures being counted as one word)				
For examining translations words at 300 vernacular words per rupee (three figures being counted as one word)				
Postal charges for the service of this estimate				
Total				
Already deposited				
Balance				
For copying words at half of the copying rates specified in Chapter XIII of the Appellate Side Rules				
„ examining words of manuscript at half of the copying rates specified in Chapter XIII of the Appellate Jurisdiction Rules				
„ editing pages of the paper-book at 8 annas 10 annas a page if it is printed and at 5 annas a page if it is typed				
„ editing maps				
„ printing 24 64 copies of the paper-book at the rate of Re. 1-2 or Re. 1-6 a page				
„ lithographing, maps, etc., actual cost				
„ tracing maps				
„ taxing pages of the paper-book at two annas a page				
Total				
Grand Total				
Already deposited				
Balance				

NOTE.—(1) The above rates are liable to alteration.

(2) The charge for editing includes the charge for indexing if the paper-book is printed, and that for stationery if the paper-book is typed.

(3) If the document to be translated is in any language other than the vernaculars of Bengal and Assam, a special rate may be fixed by the Registrar.

- (4) Each item of cost in the preparation of the paper-book at the rates specified above is calculated to the nearest anna (fraction) below half an anna being omitted and half an anna or over being reckoned as one anna).

Under Rule 22, Chapter IX of the Rules of the High Court, Appellate Jurisdiction, the amount due for estimating translations and examining translations [after deducting the amount of the initial deposit made under Rule 34(1), Chapter V] should be deposited with the Accountant of the Court within four weeks of the service of the estimate, and the whole of the remainder within eight weeks of the service of the estimate.

High Court:

The _____ 19_____
To _____

Deputy Registrar.

Advocate for the Appellant.

Signature of Advocate for the Appellant _____

Date of service _____

Form No. 13 (Civil).

Rule 21, Chapter IX.

Appeal from Original Decree/Order No.

of 19 .
Appellant,

versus

Respondent.

APPEAL VALUED AT RS. _____

Estimate of cost for translating and printing, etc., the papers to be included in Part I and II of the paper-book as per List filed on behalf of the Respondent.

	Rs.	a.	Rs.	a.
For estimating words at 10,000 words per rupee				
„ estimating maps, photos				
„ translating words at 150 vernacular words per rupee (three figures being counted as one word)				
„ examining translations words at 300 vernacular words per rupee (three figures being counted as one word)				
Postal charges for the service of this estimate				
Total				
For copying words at half of the copying rates specified in Chapter XIII of the Appellate Side Rules				
„ examining words of manuscript at half of the copying rates specified in Chapter XIII of the Appellate Side Rules				
„ editing pages of the paper-book at 8 annas/10 annas a page if it is printed and at 5 annas a page if it is typed				
„ editing maps				
„ printing 24/64 copies of the paper-book at the rate of Re. 1-2 or Re. 1-6 a page				
„ lithographing, maps, etc., actual cost				
„ tracing maps				
„ taxing pages of the paper-book at two annas a page				
Total				
Grand Total				

NOTE.—(1) The above rates are liable to alternation.

(2) The charge for editing includes the charges for indexing if the paper-book is printed, and that for stationery if the paper-book is typed.

(3) If the document to be translated is in any language other than the vernaculars of Bengal and Assam, a special rate may be fixed by the Registrar.

(4) Each item of cost in the preparation of the paper-book at the rates specified above is calculated to the nearest anna (traction below half an anna being omitted and half an anna or over being reckoned as one anna).

Under Rule 22, Chapter IX of the Rules of the High Court, Appellate Jurisdiction, the amount due for estimating, translating and examining translations should be deposited with the Accountant of the Court within four weeks of the service of the estimate, and the whole of the remainder within eight weeks of the service of the estimate.

High Court:

The _____ 19 _____

Deputy Registrar.

To _____

Advocate for the Appellant.

Signature of Advocate for the Respondent _____

Date of service _____

Form No. 14 (Civil).

Rule 59, Chapter IX.

The following second appeals from Orders|Decrees have been registered
on.....19 .

Serial No.	Appeal No. and year.	Name of first Appellant.	Name of Appellant's Advocate.
1	2	3	4

Superintendent M.A. Section.
S.A.

HIGH COURT, APPELLATE JURISDICTION,
CALCUTTA;

The

19 .

Form No. 15, (Civil).

Rule 66, Chapter IX.

HIGH COURT.

LIST OF APPEALS PLACED ON GENERAL LIST DURING THE WEEK
ENDING 19 .

No. of Appeal.	Appellant.	Respondent.	Advocate for Appellant.	Advocate for Respondent.

*High Court,
Appellate Jurisdiction.**Superintendent,**The 19 .*Form of
APPLICATION FOR COPY.

Form No. 16 (Civil).

Rule 19, Chapter XIII.

Space for Search-
ing-fee.Two annas Court-
fee stamp on
application.Space for Expe-
dition-fee.IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL

APPELLATE JURISDICTION.

Serial.No.

Application for urgent|ordinary copy.

*.....No. of 19 .

*Here state class of case, e.g.,

S.A., Civil Rule, etc.

.....Appellant|Petitioner.

versus

.....Respondent|Opposite Party.

Description of document of which copy is wanted, with date when necessary.

Application is made by....., the undersigned for certified/uncertified copy of the marginally noted document from the High Court/lower Court file in the above case which was disposed of/is still pending on.....
The following stamps and stamp-sheets are filed.

Signature of applicant.

<i>Office Report.</i>	<i>Estimate of Costs.</i>	
The copy will cover sheets.	(Excluding stamps and stamp-sheets filed.)	Estimated stamps, etc., notified on .
		Estimated stamps, etc., supplied on .
		Applicant's signature
		Record received on
		Copy will be ready on
		Copy actually ready on
		Copy delivered on .
Search-fee is/is not required.	Rs. a. p.	
	Stamp-sheets at 4 annas .	
	Court-fee stamps at 4 annas .	
	Court-fee stamps at 8 annas .	
	Stamp for authentication .	
	Extra stamp for urgency .	
	Searching-fee in stamps .	
	Total .	
Superintendent.	Supreintendent, Copying Section.	

Serial No.

Received an application for copy bearing the above number.

Estimated stamps and stamp-sheets valued at Rs. annas supplied on 19 .

To attend copy on 19 .
Date 19 .

Received copy on 19 with Superintendent. unused stamps and stamp-sheets valued at Rs. annas .

Applicant.

NOTE.—The application will not be considered as complete until stamps and costs have been supplied in full, which must be done seven days of the date of the estimate. All enquiries and complaints shall be accompanied by this counterfoil. It will have to be given up when the copy is delivered.

HIGH COURT OF JUDICATURE AT FORT WILLIAM IN
BENGAL

NOTIFICATION.

No. 14880 G., the 20th December, 1938.

The following amendments which have been made to the "Rules of the High Court, Appellate Side, 1936 (Seventh Edition)" are published for general information. They will come into operation with effect from the 1st January, 1939:—

CHAPTER IV.

1. Page 18, Rule 1.—*Omit* the words and figures "Rules 34 (2) (a), Chapter V and Rules 8 and 59" in column 3 of item 15 of the Schedule to this Rule and substitute therefor the following:—

"Rules 8 and 61".

CHAPTER V.

1. Page 34, Rule 33 (a)—*Omit* the last two lines of this Rule and *substitute* therefor the following:—

"by being entered in a list in form No. 14 (Civil), page 187, Appendix I, which will be displayed outside the Appeal Section concerned and a copy sent to the Bar Association's Library. This shall constitute sufficient notice of the date of registration of the Appeal."

II. Pages 34-36, Rule 34—*Omit* paragraph 2, clauses (a), (b) and (c) of this Rule.

III. Page 49, Rule 40—*For* the figure 66 in line 5 of this Rule *substitute* the figure 62.

CHAPTER IX.

1. Page 93, Rule 9A—*Omit* the words "not exceeding Rs. 50 in value" in the two places in which they occur in this Rule.

II. Page 110, *For* the heading "Part III—Appeals from Appellate Decrees" *substitute* the following:—

"Part III—Appeals from Appellate Decrees or Orders."

III. Page 110-111, Rule 56, (a) *substitute* the words "Decrees and Orders" *for* "Decree" in the 2nd line of this Rule.

(b) *Substitute* the following *for* the Notes under this Rule.

NOTE (1).—If any ground taken in a memorandum of appeal necessitates a reference to the plaint, written statements or any documents other than those mentioned above, the appellant shall, at the time of the preliminary hearing under Order XLI, Rule 11, C. P. C. provide, for the use of the Court, two typewritten copies of such pleadings or documents, or, if they are not in the English language, typewritten copies of translations thereof and such documents shall form part of the Paper Book. If he fails to provide such copies he shall not be heard in regard to such ground or grounds except with the leave of the Court.

NOTE (2).—If at the time of the preliminary hearing under Order XLI, Rule II, C. P. C. the Court directs that the pleadings or any documents other than those mentioned in this Rule be included in the Paper Book, the appellant shall include in the Paper Book such pleadings or documents or, if the said pleadings or documents are not in the English language, translation thereof.

NOTE (3).—If any respondent considers that reference is necessary to the pleadings or to any other document and the same have not been included in the Paper Book, he shall prepare two type-written copies of the said pleadings or documents or of translations of the same if they are not in the English language for the use of the Court at the time of hearing and shall serve one copy on the advocate for the appellant, within a week after the inclusion of the appeal in the General Warning List."

IV. Pages 111-114—Delete Rules 57-65 and insert the following as Rules 57-62:—

"57. The Paper Book shall be neatly typed on white durable paper of foolscap size with a margin of two inches and shall contain about 20 lines in each full page.

If in any case printed Paper Book is prepared the printing shall be done in accordance with the directions contained in Rule I of this Chapter.

The Registrar may decline to accept any Paper Book which has not been prepared in accordance with these Rules.

"58. The Appellant shall along with filing of the fee for the issue of notice to the Respondent under Order XLI, Rule 14, Civil Procedure Code, file with the Officer in Charge of the Judicial Department a declaration duly signed by himself stating the name of the Advocate by whom his Paper Book will be prepared.

59. When an Appeal has been admitted under Order XLI, Rule 11, Civil Procedure Code, and the records, called for under the provisions of Rule 31, Chapter V of these Rules, have arrived the Officer-in-Charge of the Judicial Department shall serve a notice on the Advocate authorised by the Appellant to prepare the Paper Book under Rule 58 informing him of the arrival of such records and calling upon him to file, before the expiry of 30 days from the date of receipt of such notice by the Advocate two copies of the Paper Book for the use of the Court prepared

in accordance with Rule 56 accompanied by sufficient number of copies for service on all the appearing Respondents and upon the Deputy Registrar of the Court, if the latter has been appointed guardian *ad litem* of a minor Respondent, and a certificate to the effect that the Paper Book has been compared with the original papers. The copies supplied for the use of the Court shall tally as to paging, etc., with the copies used by the Advocates for the Appellant, the Respondents and the Deputy Registrar, at the final hearing.

60. An Advocate authorised under Rule 58 to prepare the Paper Book on behalf of the Appellant shall be afforded all reasonable access to the original record in order to enable him to prepare the Paper Book and to correct his copies where necessary and make translations, but shall not be entitled to remove such original record from the Court's office or to make copies of any documents. Certified transcripts of papers shall be furnished to him if he so desires, upon payment of the usual charges.

(a) Such Advocate shall himself deal with the original records made over to him, and is hereby prohibited from entrusting them to the care of any other person.

(b) Such Advocate shall be permitted to utilise the services of one reader or Muharrir to assist him in comparing the manuscript of the Paper Book with the original record. He must, however, himself be present and continuously in possession of the records and on his leaving the office the records must be returned to the officer of the Court in charge and the work of preparing the Paper Book must at once cease, the reader or Muharrir leaving with his employer.

(c) If a certified copy of a map has to be compared with the original such Advocate shall be allowed to utilise the services of a draftsman, who will be allowed access to the records on the same terms as the reader or Muharrir.

61. The respondent shall at the time of entering appearance deposit with the Accountant the sum of Rs. 5 in full payment of the costs of the Paper Book.

Provided that in cases in which there was an order of remand passed by the lower Appellate Court and in which the previous judgments (original and appellate) will have to be included in the Paper Book the charge for the Paper Book to the Respondent will be Rs. 6 instead of Rs. 5 as in other cases:

Provided further that in a case of batches of analogous appeals the charge shall be regulated as follows:—

Rs. 5 or 6, as the case may be, for the first appeal, annas 12 per appeal for the next 4 appeals and annas 6 for every appeal thereafter, the additional charge for analogous appeals not exceeding Rs. 5 in any case.

No charge shall be made for the copy, if any, served on the Deputy Registrar of the Court as guardian *ad litem* of a minor respondent.

The Appellant on his filing the requisite number of Paper Books shall be entitled to withdraw the amount or amounts deposited by the appearing Respondent or Respondents.

If a Respondent requires additional copies of the paper book he shall deposit Rs. 5 per copy with the Accountant of the Court and the Appellant shall be at liberty to withdraw the same upon production of an acknowledgment of receipt of paper book from the Respondent.

NOTE 1.—Where analogous appeals have been presented in separate batches each batch of such appeals presented by the same Appellant, or by the same Advocate representing different Appellants, shall be considered as a separate batch of analogous appeals and the charge in respect of Paper Book shall be calculated for each batch of such appeals separately.

NOTE 2.—In the case of single appeals presented by different Advocates or Appellants in person, the charge for Paper Book shall be calculated as provided in this Rule for each such separate Appeal, notwithstanding that such appeals may be analogous to others.

62. In the event of the Appellant failing to file the Paper Book within the time prescribed in Rule 59 the Officer in charge of the Judicial Department shall lay the matter before the Registrar, who may, on an unstamped application, in suitable cases extend the period for filing the Paper Book, or may at once cause the appeal to be set down before the Division Court for orders. If the Appellant fails to satisfy the Court as to the delay, the appeal may be dismissed for want of prosecution, or the Court may pass such other order as it may deem proper."

V. Pages 114-115—*Renumber* Rules 66 and 67 as Rules 63 and 64 respectively.

VI. Page 114—*Insert* the word "Original" before the word "Orders" in the heading "Part IV—Appeals from Orders."

VII. Pages 115-116, Rule 68—*Omit* the Rule.

VIII. Page 116, Rule 69—*Omit* the words "in which the valuation of the appeal exceeds Rs. 50" in two places in which they occur in this Rule and *renumber* the rule as Rule 65 and the subsequent rules accordingly.

IX. Rule 81 (Renumbered Rule 77)—*For* the figure 66 in line 6 of this Rule *insert* the figure 63.

CHAPTER XII.

1. Page 133, Rule 9—*Add* the following item under the heading "Second Appeals" in this Rule:—

Paper Book costs to successful party irrespective of value of appeal—

(1) If Appellant—

(a) Rs. 10 (Rs. 12 in appeals in which there was any order of remand passed by the lower appellate Court in which the previous judgments (original and appellate) have been included in the Paper book for each independent appeal and .

(b) in analogous appeals Rs. 10 or Rs. 12, as the case may be, for the first appeal, Re. 1-8 per appeal up to four such appeals and annas 12 for every appeal in excess of four, the additional charge for analogous appeals not exceeding Rs. 10 in any case.

(2) If Respondent—

(a) Rs. 5 [Rs. 6 in appeals in which there was an order of remand passed by the Lower Appellate Court and in which the previous judgments (original and appellate) have been included in the Paper Book] for each independent appeal and

(b) in analogous appeals Rs. 5 or Rs. 6 as the case may be, for the first appeal and half the charges prescribed for the Appellant in respect of analogous appeals, the additional charge not exceeding Rs. 5 in any case."

APPENDIX.

Page 196—*Cancel* Form No. 25 (Civil) as introduced by slip No. 51, dated the 15th September, 1937.

BOMBAY HIGH COURT

APPELLATE SIDE RULES.

PART I.

CHAPTER I.

RULES FOR THE CONDUCT OF BUSINESS.

1. The Civil and Criminal Jurisdiction of the Court on the Appellate Side shall, except in cases where it is otherwise provided for by these rules or ordered by the Chief Justice, be exercised by a Division Court consisting of two Judges.

Jurisdiction ordinarily exercised by Division Court of two Judges.

2. The following matters may be disposed of by a single Judge:—

Matters disposed of by a single Judge.

I. ~~The preliminary hearing of—~~

(a) Appeals under O. XLI, r. 11 of the Code of Civil Procedure.

(b) Applications for rules *nisi* in the exercise of the Court's Revisional Jurisdiction under section 115, Civil Procedure Code, or the Letters Patent or under section 25 of the Provincial Small Cause Courts Act, IX of 1887, or under proviso to section 75(1) of the Provincial Insolvency Act, V of 1920.

(c) Applications for rules *nisi* in the matter of the stay of the execution of decrees or orders and for the grant of *interim* stay under O. XLI, r. 5.

II. Applications for extending the time for, or ordering any particular method of, service on a respondent under O. XLI, r. 14.

III. Applications for entering on the record the name of the heir or legal representative of a deceased appellant or respondent under O. XXII, rr. 2, 3, 4.

IV. Applications for orders of abatement, or for setting aside the same (O. XXII, rr. 3, 4, 9).

V. Applications under O. XXII, r. 10, Civil Procedure Code.

VI. Applications for the postponement or expediting the hearing of cases, not otherwise provided for, or for fixing any particular day for the hearing of a case.

Limitation
Act, s. 5.

VII. Applications to excuse delay or to decide as to the admissibility or otherwise of any appeal or application presented after the period prescribed by law.

VIII. Applications to be allowed to appeal as a pauper, under O. XLIV.

IX. Applications for the return of documents filed in cases, when the Registrar has refused to return them.

X. Applications for copies of documents which have been refused by the Registrar.

XI. Applications for the withdrawal of an appeal or application or for a consent decree or order under O. XXIII.

XII. Applications for the refund of money deposited with the Nazir, when such refund has been refused by the Registrar.

XIII. Applications regarding the adjustment of costs.

XIV. Applications for extension of time for payment of process fees, printing charges or translation charges not paid within the time allowed.

XV. Appeals or applications in which no steps have been taken or in which all endeavours have

failed to serve notice on a respondent or opponent within the period prescribed by law.

XVI. Applications against the order of the Registrar refusing the translation of any document, or refusing to register an appeal or application (O. XLI, r. 9).

XVII. Applications for the admission of a next friend of a minor or a person of unsound mind or for the appointment of a new next friend and a guardian for the suit (O. XXXII).

XVIII. Applications under O. I, rr. 8, 10 and 11 of the Code of Civil Procedure.

XIX. Applications for taking security under O. XLI, r. 10 of the Code of Civil Procedure.

XX. Applications for extension of time in cases remanded for further evidence or finding on issues.

XXI. Applications for rule *nisi* in the matter of transfers of suits from one Subordinate Court to another under section 24, Civil Procedure Code.

XXII. During the vacation, civil or criminal applications of an emergent nature.

3. A single Judge, when so ordered by the Chief Justice, may dispose of—

(a) Appeals from appellate decrees under O. XLII.

Matters
disposed of
by a single
Judge when
so directed.

(b) Appeals under section 47 of the Civil Procedure Code.

(c) Appeals under the Guardians and Wards Act, VIII of 1890.

(d) Appeals from Orders under section 104, and O. XLIII, r. 1 of the Civil Procedure Code.

(e) Applications for the exercise of the Court's Revisional Jurisdiction, after the issue of a rule *nisi*.

(f) Applications in the matter of stay of execution of decrees and for the grant of *interim* stay, after the issue of a rule *nisi*.

(g) Applications for transfers of suits from one Subordinate Court to another under section 24, Civil Procedure Code, after the issue of a rule *nisi*.

(h) Appeals, applications, petitions and references under the Code of Criminal Procedure except

(i) Appeals and references in cases in which sentence of death or transportation for life has been passed.

(ii) Appeals by Local Government under section 417 of the Code of Criminal Procedure from orders of acquittal.

(iii) Cases submitted under section 307 of the Code of Criminal Procedure.

(iv) Cases in which a notice has issued under section 439 of the Code of Criminal Procedure to an accused to show cause why the sentence should not be enhanced.

The Judge may refer any matter brought before him under this rule to a Division Court.

* * * * *

Applications for transfer of suit from Mofussil Civil Courts.

5. Applications for the transfer of suits from Civil Courts in the Mofussil to the High Court under section 24 of the Civil Procedure Code shall be made to, and disposed of by, a Division Court. When the application is granted, the record and proceedings shall be sent to the Original Side, where the suit will be tried.

* * * * *

References from the Court of Small Causes.

7. References from the Court of Small Causes, Bombay, shall be placed before a Division Bench on the Appellate Side on the day fixed for the hearing or as soon thereafter as may be convenient.

Objections to *ex parte* order excusing delay.

8. When a rule has been granted after an *ex parte* order excusing delay in any Civil Revision or Review Application filed after the period prescribed by law, notice of such rule shall be issued to the Opponent together with the notice of the order ex-

cusing delay and he shall at the same time be informed that he may, if he wishes to do so, apply, within a fortnight of his receiving the notice, to the Registrar to have set aside the *ex parte* order excusing delay. The Registrar shall thereupon place the *ex parte* order before a Division Bench for decision.

If such application is not made within the time prescribed above or such further time as the Court may in its discretion allow, the Opponents shall be precluded from taking objection at the final hearing to the order excusing delay.

CHAPTER III.

APPEALS UNDER SECTION 15 OF THE LETTERS PATENT.

18. Any person wishing to appeal under section 15 of the Letters Patent against a decision of a Judge, must file the petition of appeal within 60 days from the date of the decision appealed against, unless the Court in its discretion, on good cause shown, shall excuse the delay.

Petition of appeal under section 15 of the Letters Patent to be filed within 60 days.

19. The petition of appeal need not be accompanied by a copy of the decree or order appealed against but if the appeal is against the decision in a Second Appeal it shall be accompanied by a certificate of the Judge that the case is a fit one for appeal. This certificate shall ordinarily be asked for, if at all, at the hearing of the Second Appeal and forthwith after the decision has been given by the Judge.

Copy of decree or order unnecessary but a certificate necessary in a Second Appeal.

20. An appeal from a judgment of a single Judge passed under Order XLI, rule 11, of the Code of Civil Procedure, or from the judgment of a single Judge exercising powers under rule 3 above, other than a judgment made on or after the 1st February 1929 in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of

Trial of appeal against the judgment of a single Judge.

appellate jurisdiction by a Court subject to the superintendence of the High Court shall be brought before a Division Court for a preliminary hearing *ex parte*.

An appeal from a judgment of a single Judge made on or after the 1st February 1929 in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court shall not be brought before a single Judge or a Division Court for preliminary hearing if it is accompanied by a certificate of the Judge who passed the judgment that the case is a fit one for appeal, but shall be brought before a Division Court for final hearing after it is admitted to the register and notice of the appeal is served upon the Respondent.

When Advocate may appear without fresh vakalatnama.

21. Any Advocate employed before the Judge may appear and plead in the subsequent appeal without filing a fresh vakalatnama, but no additional fee shall be included in the bill of costs in the case of an appeal against a decree made under Order XLI, rule 11, of the Code of Civil Procedure.

Provisions of O. XLI, rr. 5, 6, 7 of Code of Civil Procedure applicable.

22. The provisions of Order XLI, rules 5, 6, 7 of the Code of Civil Procedure shall be applicable to appeals under this Chapter.

CHAPTER IV.

REVIEWS OF JUDGMENT.

Application for review.

23. When an application for review proceeds on the ground of discovery of fresh matter or evidence, the documents, if any, relied upon shall be annexed to the application, with a list in the form No. 5 in Appendix H, Schedule I, of the Code of Civil Procedure, together with an affidavit setting forth the circumstances under which such discovery has been made.

24. The day for hearing an application for review of judgment shall be notified in the manner provided for appeals (O. XLI, rr. 14, 15). Notification of day for hearing.

25. It shall not be necessary for an advocate who has filed a vakalatnama at the original hearing to produce a fresh vakalatnama, in order to entitle him to apply for or to appear in the review. When fresh vakalatnama not necessary.

CHAPTER V.

APPLICATIONS FOR THE EXERCISE OF REVISIONAL JURISDICTION.

26. In the absence of special circumstances the High Court will not entertain an application in revision where an application for revision might have, but has not, been made to a lower revisional Court. When a revisional application will not be entertained.

CHAPTER VI.

REFERENCES FROM THE BOMBAY COURT OF SMALL CAUSES.

27. The case shall be signed by the Judge of the Court of Small Causes by whom the reference is made, and shall be forwarded together with other necessary papers to the Registrar, High Court, Appellate Side, Bombay. Cases to be forwarded to the Registrar.

28. The case shall be numbered and the number of the case and the names of the parties shall be entered in the Register of Civil References maintained in the Registrar's office. Number and Title to be entered in a Register.

29. The Registrar as soon as the case is received, shall appoint a day for the hearing thereof, which shall not be sooner than four days from the day of its receipt, and he shall notify the day fixed for the hearing of the case to the Advocate of the parties, if they are represented by Advocates or to the Regis- Date appointed for hearing to be notified.

trar of the Court of Small Causes for communication to the parties, if they are not represented by Advocates.

Copy of the
Judgment to
be sent.

30. The Registrar shall, after disposal of the reference, forward to the Registrar of the Court of Small Causes a certified copy of the judgment or order of the High Court.

CHAPTER VII.

CASES FOR THE CONFIRMATION OF A DECREE UNDER THE INDIAN DIVORCE ACT.

31. Cases for confirmation of a decree received from a District Judge under Sections 17 and 20 of the Indian Divorce Act IV of 1869 shall not be heard by the High Court till after the expiry of six months from the pronouncing of such decree.

32. After the period of six months mentioned above has expired, the decree may be confirmed, even though no application for that purpose has been made to the Court, or no party appears at the hearing.

33. Any person wishing to show cause against the confirmation of the District Judge's decree on the ground that the decree has been obtained by collusion or by reason of material facts not being brought before the Court, or because of any change of circumstances since the passing of the decree such as that the parties have resumed the relations of husband and wife, or that the petitioner has died, shall, if the Court so permits, enter an appearance in the proceedings before the High Court and file affidavits setting forth the facts upon which he relies. Certified copies of the affidavits shall be served upon the party or the Advocate of the party in whose favour the decree has been pronounced.

34. The party in the suit in whose favour the decree has been pronounced may within a time to be fixed by the Court file the affidavits in answer, and

the person showing cause against the decree being confirmed may within a further time to be so fixed file affidavits in reply .

CHAPTER X.

RULES FRAMED BY THE HIGH COURT UNDER SECTION 27 OF THE INDIAN PRESS (EMERGENCY POWERS) Act, 1931.

49. Every application to the High Court under section 23 of the Indian Press (Emergency Powers) Act, 1931, shall be made by the presentation of a petition which shall be signed by the applicant and verified at the foot by the affidavit of the applicant.

50. The petition shall be written in the English language on foolscap paper or other paper similar to it in size and quality, and divided into paragraphs, numbered consecutively. Dates and sums occurring in the petition shall be expressed in figures.

51. The petition shall be headed "In the High Court of Judicature at Bombay, Appellate Jurisdiction", and shall be intitled "In the matter of the (Name or description) book, document, newspaper or printing press", as the case may be.

52. The petition shall state what the interest of the applicant is in the property in respect of which the order of forfeiture has been made and all documents and copies thereof in proof of such interest together with a copy of the order of forfeiture shall be annexed as exhibits to the petition.

53. The petition shall state the ground or grounds on which it is sought to set aside the order of forfeiture.

54. All vernacular documents annexed as exhibits to the petition and all vernacular documents relied on by the applicant and intended to be in evidence,

shall be translated into English by an Official Translator or Translators so that no question may arise as to the accuracy of the translations or the admissibility in evidence of the documents and the translations annexed to them by reason of defects in such translations.

55. Printed or typed paper-book containing the petition and all exhibits annexed thereto with translations shall be prepared in the manner prescribed by the Rules for the preparation of paper-books in appeals to the High Court, and on admission, six copies of the paper-books shall be delivered to the Registrar by the applicant.

56. If the petition is admitted by the High Court, notice in writing of the day appointed for the hearing and determination of the application shall be given to the Public Prosecutor, Bombay, and a copy of the petition and exhibits with translations if any, shall accompany such notice.

57. The costs of any application under section 23 shall be in the discretion of the Court hearing the application.

58. The Table of Fees now in force in this Court in its Original Civil Jurisdiction shall be applicable to applications under section 23 of the Indian Press (Emergency Powers) Act, 1931, and proceedings thereon, and costs payable in respect of such applications and proceedings, when costs have been awarded, shall be taxed on that scale unless otherwise ordered.

59. The provisions of the Code of Civil Procedure and the Rules and Forms of this Court relating to execution of decrees and order, shall be applicable to the execution of orders passed by the High Court on applications under section 23 of the Indian Press (Emergency Powers) Act, 1931.

CHAPTER XIII.

LIMITATION.

68. Applications for the exercise of the Court's Revisional Jurisdiction under section 115, Civil Procedure Code, or section 25 of the Provincial Small Cause Courts Act, IX of 1887, or the proviso to section 75 (1) of the Provincial Insolvency Act, V of 1920, must be made within ninety days from the date of the decision complained against, exclusive of the time required for obtaining copies.

Time for applications for exercise of Revisional Civil Jurisdiction.

* * * * *

70. Nothing in rules 68 and 69 will prevent the Court from excusing in its discretion any delay in the presentation of the applications referred to in these rules.

71. If an appeal or application is returned by the Registrar to the party or his Advocate as beyond time, an application for admitting the appeal or application after the period of limitation prescribed therefor shall be made within a fortnight of the date on which the appeal or application was returned to the party or his Advocate as beyond time:

Time for applications for excuse of delay in filing an appeal, etc.

Provided that if the party or Advocate moves the Court to revise the order of the Registrar the application for admitting the appeal or application after the period of limitation prescribed therefor may be made within a fortnight of the date on which the Court passes its order on the motion.

72. A motion for the revision of a *quasi judicial* order passed by the Registrar, Deputy Registrar or Assistant Registrar while exercising the powers lawfully delegated to him shall be made within one month of the date of the order complained of.

Time for revision of order of Registrar, etc.

CHAPTER XIV.

AFFIDAVITS AND COPIES REQUIRED TO BE FILED
ALONG WITH OR AFTER THE FILING OF
APPEALS AND APPLICATIONS.

73. In all applications for the exercise of Revisional Jurisdiction of the Court, the statement of fact must be verified by affidavit in the manner prescribed by law for the verification of plaints (O. VI, r. 15) unless, in any criminal matter, the Court shall see fit to dispense with the affidavit. In the case of an application coming from a person in jail, the oath or solemn affirmation shall be made before a Judge or Magistrate.

74. When an application is made by the heir of a deceased party to an appeal praying that his name may be substituted, an affidavit is required setting forth the date of the deceased's death, unless the application, on the face of it, appears to be within time.

75. Every application for review shall be accompanied by a copy of the judgment or order complained of.

76. Every application for the exercise of the Revisional Jurisdiction of the High Court must be accompanied by a copy of the judgment or order complained of.

77. Memoranda of second appeals or applications for the revision of appellate decrees or orders must be accompanied by copies of the decrees and judgments or orders of both the lower Courts.

78. An appeal in execution proceedings must be accompanied by a copy of the operative part of the decree sought to be executed as well as by a copy of the order appealed from and, if the appeal is a second appeal, by a copy of the order of the original Court.

(Newly substituted Vide Bombay Government Gazette for 1936, Part IV-A, page 172.)

79. Appeals against acquittals on appeal, and applications in criminal matters for the revision of orders passed on appeal must be accompanied by copies of the judgments of both the lower Courts and where the order complained against is that of a Sessions Court having jurisdiction over more than one Revenue District should show the Revenue District in which the original proceedings were instituted.

80. The Appellant or his Advocate in a Letters Patent Appeal shall furnish to the office for the use of the Court within one week of the admission of the appeal to the Register:—

Copies required for the use of the Court.

- (i) a copy of the memorandum of appeal,
- (ii) if the appeal is from a decision in an appeal in this Court a copy of the memorandum of the latter appeal if it has not been furnished already (in such latter appeal),
- (iii) if the appeal is from a decision in an application to this Court a copy of such application, and
- (iv) a copy of the judgment or order of the trial Court if the appeal is required to be brought before a Division Bench for preliminary hearing under the provisions of Rule 20.

81. Whenever any application is supported by an affidavit two copies of the latter, or if the same is not in English, two copies of an English translation thereof, shall be furnished for the use of the Court.

82. In all applications referred to or to be heard by a Division Bench, the applicant or his Advocate shall furnish to the office two typewritten or printed copies of the application and judgments or orders of the lower Courts, and of the affidavits (when in English), within a week of the date on which the application is referred to the Division Bench if the

Typed or printed copies of civil applications to be furnished by party.

application is so referred to it and within a week of an intimation from the Assistant Registrar in other cases:

Provided that in all applications under section 66 (3) of the Indian Income Tax Act, XI of 1922, where a *Rule Nisi* has been granted the applicant or his Advocate shall furnish three typewritten or printed copies of such applications with all its enclosures within one week of the date on which the rule is granted, one of which copies will be served on the Commissioner of Income Tax along with the Court's Notice.

If the applicant or his Advocate so desires, the Registrar's office will arrange to prepare the requisite number of typewritten copies on payment of one anna and six pies per folio of 90 words.

Should the opponent file an affidavit in English reply, he too should furnish within a week two typewritten or printed copies of the same or may apply to the Registrar to be furnished with the requisite number of typewritten copies at the rate of one anna and six pies per folio of 90 words.

The cost of such typewritten copies will be shown in the Bill of Costs.

If the copies so required are not furnished and no application has been made to the Registrar that copies may be prepared the application under Revisional Jurisdiction will be placed before the Court for orders and will be liable to be dismissed for want of prosecution or in the case of a written statement rejected.

83. In applications which are filed in any appeal after the admission of such appeal the Advocates shall furnish two copies of such applications for the use of the Court and shall get a copy thereof served on the opposite side.

84. Where an accused person has preferred an appeal or application for revision to the High Court

Registrar to
dispense
with copies

accompanied by the requisite number of copies of the judgments, the Registrar may dispense with copies of judgments in any subsequent appeal or application for revision presented by any co-accused affected by the same judgment.

of judgments
in subse-
quent
appeals by
co-accused.

Where the Registrar has so dispensed with copies of Judgments he may direct all such appeals or applications to be brought on for hearing so far as practicable together.

Date of
hearing.

85. The Registrar may dispense with the copies of the Judgments, orders or decrees referred to in rules 75, 76, 77 and 78 when they are already on the record of the High Court.

When copies
in rules may
be dispensed
with.

86. When an appeal or application is not accompanied by the affidavit or copies required to be filed along with it under the provisions of rules 73 to 79 the Registrar may keep it back for one month after the last day allowed for filing the appeal or application in order that the affidavits or copies may be filed. If the affidavits or copies are not filed within the period, the Registrar shall return the appeal or application to the party or his Advocate.

Course to be
followed
when certain
affidavits or
copies are
not filed.

87. The Registrar may return to the appellant or his Advocate the copy of the judgment, and of the decree filed with the memorandum of appeal after the appeal has been disposed of by the Court, and after the time allowed for appeal has expired.

When and
what copies
to be
returned.

"87A. Rules 74 and 87 apply *mutatis mutandis* to all applications other than memoranda of appeals which may be presented to the Court, and in rule 87 the term 'appellant' includes 'applicant'."

(Vide *Bombay Government Gazette*, 1936, Part IV-A, page 120.)

CHAPTER XVII.

COURT FEES, SECURITY FOR COSTS AND
PRINTING CHARGES.*A. Court fees.*

Memorandum of appeal to show and explain the value of the claim.

133. The value of the claim in appeal shall be shown in the memorandum of appeal and it should, where necessary, be stated how the valuation has been arrived at.

Difference in valuation in the lower Court and that in the High Court to be explained.

134. When the Court-fee on the appeal differs from that paid in the Court below, the difference must be fully accounted for in a foot-note to the memorandum of appeal, and the appellant's Advocate must furnish all information necessary to explain it within three weeks from the date of the requisition by the office.

When no inquiry need be made.

135. When the Court-fee paid on an appeal is found to correspond with the Court-fee paid and accepted in the Court below, no further enquiry need be made unless from the papers filed with the appeal, it appears that the Court-fee has been assessed on a mistaken principle, and that a different stamp is required on the appeal.

When excess to be refunded.

136. If, after assessing in accordance with the preceding Rules the Court-fee payable, it appears that stamps of a greater value than is required have been affixed to the appeal, memorandum of cross-objections or application, a refund certificate for the excess shall, after obtaining the order of the Taxing Officer, be granted: Provided that no such certificate shall be granted under this Rule for any sum less than Rs. 3 in any one case.

Procedure in case of deficiency.

137. (i) If the Sheristedar consider that an appeal from a decree or an order having the force of a decree or memorandum of cross-objections is insufficiently stamped, he shall inform the party or his Advocate of the amount of deficiency of Court-

fee and require such party or Advocate either to take back the appeal or memorandum of cross-objections or agree to pay the deficiency of Court-fee. If neither is done within four days, the matter shall be referred to the Taxing Officer.

(ii) If the Sheristedar consider that an application or an appeal other than an appeal from a decree or an order having the force of a decree or a copy required to be filed along with an appeal or application is insufficiently stamped, he will return it to the party or his Advocate unless the latter pays the remaining Court-fee forthwith or applies to and obtains from the Registrar time to pay the the deficiency of Court-fee.

138. (i) If in the cases contemplated in Rule 137, paragraph (i) the party or Advocate takes back the appeal or memorandum of cross-objections to pay the deficiency of Court-fee, it may be paid at any time before the evening of the twenty-first day from that on which the party or Advocate was informed of the deficiency, or, if on the twenty-first day the Court is closed, then before the evening of the next Court-day.

Time within which the deficiency may be paid.

(ii) If in the cases contemplated in Rule 137, paragraph (i), the party or Advocate agrees to pay the deficiency of court-fee, it may be paid at any time before the evening of the twenty-first day from that on which the party or Advocate was informed of the deficiency, or, if on the twenty-first day the Court is closed, then before the evening of the next Court-day.

139. If the matter be referred to the Taxing Officer and he decide that there is a deficiency of Court-fee, the additional Court-fee may be paid in at any time before the evening of the twenty-first day from the date of the information of the decision, or, if on the twenty-first day the Court is closed, then before the evening of the next Court-day.

Time for paying the deficiency when the matter is referred to the Taxing Officer.

Procedure if
deficiency is
not paid.

140. If, in the cases contemplated in Rules 137 (ii) and 138 (ii) and 139, the deficiency of Court-fee be not paid within the time prescribed or subsequently enlarged under section 148 of the Code of Civil Procedure the appeal, memorandum of cross-objections or applications shall be placed before a Judge for disposal.

Stamps to be
cancelled.

141. The stamps on all appeals, applications and other documents presented in the office shall be cancelled on the day of presentation or within a reasonable time from the date of presentation but invariably before the document is filed or registered.

Condition
precedent to
the sanction
of a refund.

142. No application for refund of stamp duty shall be allowed unless the Advocate concerned makes a declaration in writing that his client is alive and that he still represents him, provided that no such declaration need be demanded when the application is made within two years from the date of the return of the appeal or application on which the stamp duty has been paid.

Certificate
to be issued
when refund
is allowed.

143. Whenever registration of any appeal, memorandum of cross-objections or application is for any reason refused by the Registrar, a refund certificate shall on application be granted to the party or his Advocate entitling him to receive back the value of the court-fee stamps cancelled in the office in respect of such appeal, memorandum of cross-objections or application and the copies therewith filed.

Statement
of refund to
be endorsed
on the docu-
ment.

144. When a refund certificate is granted in respect of the whole or a part of any court-fee, a statement of the amount refunded shall be endorsed under the signature of the Registrar on the document to which such stamp is affixed.

B. Security for costs.

The Nazir
shall receive
and justify
security.

145. The Nazir shall receive and justify the security in all cases in which it may be required.

146. In the case of money deposited with the Nazir as security for costs under Order XLI, rule 10, Civil Procedure Code, the following rules shall be observed:—

Rules to be observed in the case of money deposited with the Nazir as security for costs under O. XLI, r. 10, Code of Civil Procedure.

I. When a deposit of money has been made by the appellant, in place of giving security for costs, any surplus in excess of the secured costs shall be returned to the appellant, or his Advocate, as soon the bill of costs has been prepared and the decree issued.

II. Deposits unclaimed for ten years after the date of the final decree shall be credited to Government.

III. For the purposes of these Rules, the Advocate, who represented the depositor in the appeal, shall be entitled to receive the refund—

(i) as a matter of course, within one year from the date of the final decree,

(ii) on making a written statement that his client is alive and that he still represents such client, if more than a year has elapsed from the date of the final decree.

IV. If a depositor dies after the decision of the appeal or application in which the deposit was made, it shall not, if in excess of Rs. 200, be returned to the person claiming to be his legal representative unless he establishes his right thereto by letters of administration, probate or a succession certificate. If the deposit is not in excess of Rs. 200 the Registrar may return it to the person claiming to be the legal representative of the depositor on the production of such evidence as the Registrar may deem sufficient."

(Newly added—Vide Bombay Government Gazette for 1936, Part IV-A, page 1080.)

V. Depositors of sums over Rs. 500 should be advised to, and may, purchase and deposit, instead of such sums, Government Securities of equal amount so as to avoid loss of interest.

VI. A list of all money in deposit as security for costs shall be published on the Notice board once a year on the first July.

Application
of Rule 146
in other
cases.

147. The provisions of Rule 146 shall, so far as possible, apply to the refund of all monies in the Nazir's hands, being unexpended balances in his hands in cases of deposits other than for security for costs to a refund of which a party or his Advocate may become entitled.

C. Printing charges.

A charge of
1 rupee per
printed page
to be made
for printing
memo-
randum of
appeal and
judgment.
The printing
charges
when
payable.

148. In order to cover the costs of printing the memorandum of appeal and the judgments of the lower Courts for the use of the Court, a charge of one rupee per printed page shall be made and this amount must be paid to the Nazir by the appellant within fourteen days from the date of the order directing notice to issue provided that, if the fourteenth day is a Court holiday, it may be received on the next Court day. After the expiry of the prescribed time, the amount shall not be received unless the Registrar for sufficient reasons extends the time. If it be not paid within the prescribed time or within any extension of time granted by the Registrar the appeal shall be placed before a Judge for disposal on the first Court day after the expiration of the period fixed for the appearance of the respondent. Any further sum due on account of printing charges shall be paid into the Nazir's office within three months of the date of the notice issued by the Nazir to that effect. If it is not paid within the prescribed period, the appeal shall be placed in Court for dismissal. The amount paid shall be entered in the bill of costs as costs of the appeal.

*(Vide Bombay Government Gazette for 1937,
Part IV-A, page 1428.)*

One copy
free of
charge
allowed to

The appellant and respondent shall be entitled each to one printed copy of the memorandum and judgments free of cost; any other copies shall be

charged for at the rate of four annas per printed page.

A party may, at any time before the papers are sent to the press, give notice to the Registrar's office about the number of additional copies he will require.

appellant
and respon-
dent.
Extra copy
to be charged
for at 4
annas per
page.

When any matter is common to two or more appeals the matter to be printed separately in each appeal shall be charged for separately and the charges for printing the common matter shall be divided equally among the different appellants. When this cannot be done each appellant shall pay the usual printing charges and the paper book be printed in the usual way.

149. All Income Tax References under section 66 (2) of the Income Tax Act shall be printed before the hearing and at the expense of the party lodging the same, and 3 copies of such prints shall be lodged in the Registrar's Office at least one week before the day fixed for the hearing of the Reference.

CHAPTER XVIII.

APPEALS TO HIS MAJESTY IN COUNCIL.

150. With effect from 1st January 1926 the record of appeals to His Majesty's Privy Council shall be printed either in India or in England in accordance with the following rules:—

Rules for
printing of
records of
appeals to
Privy
Council.

I. The Record shall be printed in the form known as Demy Quarto.

II. The size of the paper used shall be such that the sheet, when folded and trimmed will be 11 inches in height and 8½ inches in width.

III. The type to be used in the text shall be Pica type, but Long Primer shall be used in printing accounts, tabular matter and notes. The number of lines in each page of Pica type shall be 47 of there-

abouts, and every tenth line shall be numbered in the margin.

IV. Records shall be arranged in two parts in the same volume, where practicable, *viz.* :—

Part I. The pleadings and proceedings, the transcript of the evidence of the witnesses, the Judgments, Decrees, etc., of the Courts below, down to the Order admitting the appeal.

Part II. The exhibits and documents.

V. The index to Part I shall be in chronological order, and shall be placed at the beginning of the volume.

The Index to Part II shall follow the order of the exhibit mark, and shall be placed immediately after the index to Part I.

VI. Part I shall be arranged strictly in chronological order, *i.e.*, in the same order as the index.

Part II shall be arranged in the most convenient way for the use of the Judicial Committee as the circumstances of the case require. The documents shall be printed as far as suitable in chronological order, mixing plaintiff's and defendant's documents together when necessary. Each document shall show its exhibit mark, and whether it is a Plaintiff's or Defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter, such as

(a) a series of correspondence, or

(b) proceedings in a suit other than the one under appeal shall be kept together. The order in the Record of the documents in Part II will probably be different from the order of the Index, and the proper page number of each document shall be inserted in the printed Index.

The parties will be responsible for arranging the Record in proper order for the Judicial Committee, and in difficult cases Counsel may be asked to settle it.

VII. The documents in Part I shall be numbered consecutively.

The documents in Part II shall not be numbered apart from the exhibit mark.

VIII. Each document shall have a heading which shall consist of the number or exhibit mark and the description of the document in the Index without the date.

IX. Each document shall have a marginal note which shall be repeated on each page over which the document extends, *viz.* :—

PART I.

(a) Where the case has been before more than one Court the short name of the Court, shall first appear. Where the case has been before only one Court, the name of the Court need not appear.

(b) The marginal note of the document shall then appear consisting of the number and the description of the document in the Index, with the date, except in the case of oral evidence.

(c) In the case of oral evidence "Plaintiff's evidence" or "Defendant's evidence" shall appear beneath the name of the court, and then the marginal note consisting of the number in the Index and the witness's name with "examination," "cross-examination," or "re-examination," as the case may be.

PART II.

The word "Exhibits" shall first appear.

The marginal note of the exhibit shall then appear consisting of the exhibit mark and the description of the document in the Index with the date.

X. The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the Index and

in the Record), if desired, with the words "not printed" against it.

A long series of documents, such as accounts, rent rolls, inventories, etc., shall not be printed in full, unless Counsel so advise, but the parties shall agree to short extracts being printed as specimens.

XI. In cases where maps sent from abroad are of an inconvenient size or unsuitable in character, the appellant shall, in agreement with the Respondent, prepare in England, from the materials sent from abroad, maps drawn properly to scale and of reasonable size, showing, as far as possible, the claims of the respective parties, in different colours.

Supplementary records
of revivor.

151. Supplementary records dealing with revivor of appeals should be transmitted to England in manuscript and not in print.

Security for
costs.

152. (1) Within the period prescribed by law, the appellant shall ordinarily find security for the payment of costs to the extent of Rs. 4,000 and shall deposit either cash or Government Securities to that amount, unless the Court at the time of granting the certificate has directed that some other form of security may be furnished. In cases of special magnitude and importance the Court will, if necessary, require security for costs to a larger amount, but in no case exceeding Rs. 10,000.

Form of
security-
bond.

(2) The form of security-bond to be taken from an Appellant to the Privy Council under Order XLV, rule 7 of the Code of Civil Procedure in cases in which the Court has directed that security may be taken is at Appendix B.

Form of
petition for
leave to
appeal.

153. (1) Petitions for leave to appeal to His Majesty in Council shall be presented in Form No. 1 in Appendix C and shall specify in the heading the actual parties to the appeal at the time of the presentation of the petition, tracing their relation to the original parties where they have been placed on the record as representatives in interest.

(2) Full particulars of addresses of the parties must be furnished within 7 days of the filing of the petition.

(3) Every petition shall be accompanied by two typed copies for the use of the Court.

154. (1) If the Court grants a rule upon the petition, the Registrar will issue notice in Form No. 2 in the Appendix C calling upon the opposite party to show cause within a period of time, after the service of the notice, to be prescribed by the Registrar, why a certificate under the Code of Civil Procedure, Order XLV, rule 3, should not be granted.

Form and
Service of
notice to
other side.

(2) Notices shall be limited, in the absence of any express direction by the Court, to.

(a) the notice of an application for a certificate under Civil Procedure Code, Order XLV, rule 3,

(b) the notice declaring the appeal admitted,

(c) the notice of the transmission of the record to England.

In case (a), where a party has been represented at the hearing of the appeal by an advocate, service of the notice on his advocate shall be deemed sufficient notice, and, unless his Vakalatnama has been cancelled with the sanction of the Court, such advocate is bound to accept service of the notice—

(i) Provided that, where the notice can be served on an advocate under the above provision, the applicant's advocate shall, in addition to the bhatta to be paid under the rules, deposit with the Nazir within four days an amount calculated at Rs. 4 per each opponent who can be so served to meet the cost of the advocate concerned for communicating the notice to his client. The Registrar may order the costs reasonably incurred by the advocate to be paid out of such deposit.

(ii) Provided also that, if the pleader served with the notice is unable to communicate it to the

party concerned, he shall inform the Registrar, who may thereupon either order the notice to be served by registered post or through a Court or if necessary obtain the directions of the Court.

(3) If the parties concerned are not served within four months from the date on which the rule is granted the Registrar shall personally investigate the causes of delay and take all possible steps to expedite the service, and if necessary he shall submit the case to the Court for direction.

Documents wherein names of parties should be set out.

155. In the petition for leave to appeal to His Majesty in Council, on the certificate under Order XLV, rule 3, on the order admitting the appeal under Order XLV, rule 8 and on the inside title page of the printed book the names of all the parties shall be set out in full.

Deposit for costs of transcript.

156. The appellant shall also within the prescribed period deposit with the Nazir the sum of Rs. 2,000 towards defraying the fees and expenses of preparing the transcript record.

Translation and Transcript.

157. (a) Within two weeks of the costs for the preparation of the paper book being deposited, an index of all the documents included in the transcript shall be prepared by the office, and annexed to the record in the following form, and shall be followed by a list of all other papers, documents, and exhibits in the case not included in the transcript :—

Number on record	Mark (if any) in the Court below.	Description and date of paper.	Whether the whole portion, and in case of a portion, what portion to be inserted in the transcript.	Pages of transcript to be filled in afterwards).
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(b) As soon as the index and the list are ready, a notice in the form given in Appendix D shall be issued by the Registrar requiring the Advocates of both parties to attend the Registrar's office for the purpose of settling the index within the time specified in the notice.

(c) It shall be in the discretion of the Registrar to omit from the transcript any documents which have not, within the time specified, been expressly asked for by the parties.

(d) If the Advocate fail to attend or to settle the index within the time specified, the Registrar shall place the matter before the Court without further delay. Any costs incurred on such account shall be borne in such manner as the Court may direct.

(e) If the parties are agreed as to the documents to be omitted, such documents shall not be translated or transcribed.

(f) In the case of the parties differing as to any document and the Registrar being of opinion that it should not be translated and transcribed, the matter shall be brought before the Court for determination.

(g) Any of the parties may apply to the Court within two weeks from the date of the Registrar's order directing any document to be included in or excluded from the transcript record.

(h) If either party shall expressly ask for translation or inclusion of any document and the application is granted the circumstances shall be noted in the transcript.

158. Any part of the record which may have been officially translated for the purposes of the hearing in the High Court shall not be translated over again unless the Court specially orders.

Translations
already
made.

159. The depositions of witnesses in the Vernacular shall not be translated in case in which the notes of the substance of the depositions are taken in English by the Lower Court unless either one or both the parties desire and show sufficient cause that particular deposition or deposition should be translated.

When de-
positions
need not be
translated.

160. The Chief Translator shall, within two weeks after the documents to be translated are determined and specified, certify by estimate whether the

The Chief
Translator
to certify as
to the suffi-

ciency of the deposit within two weeks.

deposit made by the appellant will be sufficient to cover the expense with a margin of Rs. 300; and if not, what further deposit will be necessary. The Registrar shall notify the amount of this further deposit to the appellant, who shall be required to deposit it within one month of the service of notice upon him. When the actual cost of the transcript has been ascertained, the balance, if any, of the amount deposited shall be returned to the appellant.

Failure to furnish security and deposit for transcript.

161. If the appellant shall fail within the time prescribed to furnish security for costs, or to deposit the amount required for the preparation of the transcript record in accordance with Rules 152, 156 and 160 the proceedings shall be placed before the Court for disposal.

Fees for translation and for preparing the record.

162. The translations required for the transcript record shall be made by the Court's Translators, or by such other persons as the Chief Justice may from time to time appoint in that behalf. The parties on each side shall be invited from time to time to inspect such translations, and in cases of disagreement, the points in dispute, which must be stated in writing, shall be submitted within two weeks to the Chief Translator, who shall decide. The translations thus made shall be examined and authenticated by the Chief Translator, or such other person as the Chief Justice may from time to time appoint in that behalf, and shall be filed with the record of the case.

For preparing the record, fees shall be charged at the following rates :—

Estimating . . .	Rupees 16-0-0.
Preparing index . . .	1 anna per paper.
certifying a copy of the record by the Registrar	Re. 1 for every 10 pages.
Examination of proofs	Four annas for every printed page.

Fees to be ordinarily credited to Government.

A fee of rupee 1 per folio shall be levied on account of translation; rupee $\frac{1}{2}$ per folio on account

of examination and authentication. A fee of annas three per folio of 100 words shall be levied on account of preparing certified typewritten copies of the documents, and an additional fee of one anna per folio of 100 words for comparing such copies with the originals.

The fees for translation except when the translation is done by the Court translators out of office hours or by other persons with the permission of the Chief Justice, shall be credited to Government.

The rest of the fees mentioned above shall be credited to Government.

163. Save as herein provided the practice as to translations and paper books shall be regulated by such office rules as the Chief Justice and Judges may from time to time determine. Practice as to translations and paper books.

164. The provisions of Rules 152 to 163 (both inclusive) shall apply *mutatis mutandis* to appeals admitted by an Order of His Majesty in Council granting special leave to appeal.

165. A list shall be maintained showing the numbers and dates of all pending Privy Council Appeals in various stages of preparation, and the Registrar shall examine every quarter all such appeals in arrears, and call on the appellant who may be responsible for the delay to show cause before the Court why the appeal should not be dismissed for want of prosecution.

CHAPTER XX.

FEES.

168. The following fees will be charged:—

- (1) For administering every oath or solemn affirmation . . . Re. 1 0 0
- (2) For making search in the case of the records of a case per

- day, and in the case of Registers per each Register . . . Re. 1 0 0)
- (3) For interpreting affidavits of service of notice to parties . . . Re. 1 0 0)
- (4) For interpreting affidavits in other cases and for interpreting petitions, etc. . . . 8 annas per folio.
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APPENDIX A.

(Vide CHAPTER XVIII.)

The following order of His Majesty the King in Council regulating the practice in appeals to His Majesty in Council is reproduced for information:

At the Court at Buckingham Palace the 9th day of February 1920.

Present:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas by an Act passed in the 4th year of the reign of His Majesty King William IV entitled "an Act for the better administration of Justice in His Majesty's Privy Council" it is, amongst other things, enacted that it shall be lawful for His Majesty in Council from time to time to make any such Rules and Orders as may be thought fit for regulating the mode, form and time of Appeal to be made (from the decision of which an appeal lies to His Majesty in Council), and in like manner from time to time to make such other Regulations for the preventing delays in the making or hearing such Appeals and as to the expenses attending the said Appeals and as to the amount or value of property in respect of which any such Appeal may be made:

And whereas Her Majesty Queen Victoria did by her Order in Council of the 10th day of April 1838, approve certain Rules and Orders for regulating the mode, form and time of Appeal from the decision of the said Courts and also certain regulations for the preventing delays in the making or hearing such Appeals and as to the expenses attending such Appeals and as to the amount or value of property in respect of which any such Appeal may be made:

And whereas the King's Most Excellent Majesty in Council hath deemed it expedient to rescind all the said Rules, Orders and Regulations and to substitute others in lieu thereof:

His Majesty is therefore, pleased, by and with the advice of His Privy Council, to rescind all the said Rules, Orders and Regulations in the said Order in Council of the 10th day of April 1838, contained, and to approve of the several Rules, Orders and Regulations contained in the Schedule hereto, and to order as it is hereby ordered, that the same be respectively observed by all Courts of Judicature in India and by all persons whom it shall or may concern.

Whereof the Governor General of India in Council, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

ALMERIC FITZROY.

The Schedule above referred to.

1. Applications to the Court for leave to appeal to His Majesty in Council shall be made within 90 days of the decree or order to be appealed from, subject to the provisions of section 4, 5 and 12 of the Indian Limitation Act, 1908.

2. The preparation of the Record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court: and the Court shall give such directions thereon as the justice of the case may require.

3. The Registrar, as well as the parties and their legal Agents shall endeavour to exclude from the Record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the Appeal, and, generally to reduce the bulk of the Record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of heading and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a manuscript list to be transmitted with the Record.

4. Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, and the Court allows the document to be included, the Record as printed (whether in India or in England), shall, with a view to the subsequent adjustment of the cost of and incidental to such document, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

5. Where the Record is printed in India, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council 40 copies of such Record one of which copies he shall certify to be correct by signing his name on, or initialling every eighth page thereof and by affixing thereto the seal, if any, of the Court.

6. Where the Record is to be printed in England, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council one certified copy of such Record, together with an index of all the papers and exhibits in the case. No other certified copies of the Record shall be transmitted to the Agents in England by or on behalf of the parties to the Appeal.

7. Where there are two or more Appeals arising out of the same matter and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the Appeals should be consolidated, the Court may direct the Appeals to be consolidated.

8. An Appellant who has obtained a certificate for the admission of an Appeal may at any time prior to the making of an Order admitting the Appeal withdraw the Appeal on such terms as to costs and otherwise as the Court may direct.

9. Where an Appellant, having obtained a certificate for the admission of an Appeal, fails to furnish the security or make the deposit required (or apply with due diligence to the Court for an Order admitting the Appeal), the Court may, on his own motion or on an application in that behalf made by the Respondent, cancel the certificate for the admission of the Appeal, and may give such directions as to the Costs of the Appeal and the security entered into by the Appellant as the Court shall think fit, or make such further or other Order in the premise, as in the opinion of the Court, the justice of the case requires.

10. An Appellant whose Appeal has been admitted shall prosecute his Appeal in accordance with the Rules for the time being regulating the general practice and procedure in Appeals to His Majesty in Council.

11. Where an Appellant, whose appeal has been admitted, desires, prior to the Despatch of the Record to England, to withdraw his Appeal, the Court may, upon an application in that behalf made by the appellant grant him a certificate to the effect that the Appeal has been withdrawn, and the Appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of His Majesty in Council, and the costs of the Appeal and the security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

12. Where an Appellant, whose Appeal has been admitted, fails to show due diligence in taking all necessary steps in connection with the preparation of the Record, the Court may, either on its own motion or on the application of the Respondent call upon the Appellant to show cause why a certificate should not be issued that the Appeal has not been effectually prosecuted by the Appellant, and if the Court sees fit to issue such a certificate, the Appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express

Order of His Majesty in Council, and the costs of the Appeal and the Security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

13. Where at any time between the admission of an Appeal and the despatch of the Record to England the Record becomes defective by reason of the death, or change of status, of a party to the Appeal, the Court may notwithstanding the admission of the Appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted, or entered, on the Record, in place of, or in addition to, the party who has died, or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the Record as aforesaid without express order of His Majesty in Council. If, in the opinion of the Court, there has been undue delay in making this application, the Court may order the Appellant or the party interested, to take all necessary steps to perfect the Record within such time as the Court may direct, and if, he fails to comply with such Order, the Court may call upon him to show cause why a certificate should not be issued that the Appeal has not been effectually prosecuted and if the Court sees fit to issue a certificate, the Appeal shall be deemed as from the date of such certificate, to stand dismissed for non-prosecution without express Order of His Majesty in Council, and the costs of the Appeal and the Security entered into by the Appellant shall be dealt with in such manner as the Court may think fit to direct.

14. Where the Record subsequently to its despatch to England becomes defective by reason of the death, or change of status of a party to the Appeal, the Court may, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court is the proper person to be substituted, or entered, on the Record, in place of, or in addition to the party who has died, or undergone a change of status. If, in the opinion of the Court, there has been undue delay in making this application, the Court may order the Appellant, or the party interested, to take all necessary steps to perfect the Record within such time as the Court may direct, and, if he fails to comply with such order, the Court shall report the matter to the Registrar of the Privy Council.

15. These Rules shall come into operation on the 1st day of January 1921, or on such other date as the Governor General of India in Council may determine.

(Vide Notification of the Government of India, Home Department, No. 736, dated 17th April 1920.)

APPENDIX B. (Rule 152.)

FORM OF SECURITY BOND FOR RESPONDENT'S COSTS IN AN APPEAL
TO HIS MAJESTY IN COUNCIL UNDER O. XLV, r. 7, OF THE
CODE OF CIVIL PROCEDURE.

IN THE HIGH COURT OF JUDICATURE, BOMBAY.

Appeal to His Majesty in Council.

A. B. Appellant.
C. D. Respondent.
Appeal No. of the year on the file of the
Honourable the High Court at Bombay.

Whereas permission has been granted under O. XLV, r. 3, of the Civil Procedure Code to, the abovenamed Appellant in the appeal above mentioned, to prefer an appeal to the Privy Council against the decree of the Honourable the High Court of Judicature at Bombay.

I, residing in, stand surety of my free will for the abovenamed Appellant and hereby enter into an agreement with, the Registrar of the said High Court in its appellate jurisdiction, his executors, administrators and assigns, in my own behalf and in behalf of my heirs, executors, administrators and assigns, that the abovenamed Appellant, residing at and his heirs, executors, administrators and assigns shall pay all the costs that may be incurred by the said Respondent in the said Privy Council, whenever the said Court may order the abovenamed Appellant or his heirs, executors, administrators or assigns to do so; or in the event of the said appeal being dismissed for want of prosecution under Rules 34, 35 and 36 of the Judicial Committee Rules, 1925, or otherwise, he or they shall, on proof if required, pay all the costs which the aforesaid Respondent may have incurred whether in England or in India in connection with the said Appeal or in connection with any application made in the matter of the said Appeal and in case he or they fail to pay whatever may be due as aforesaid, I personally and my heirs, executors, administrators and assigns shall pay into the High Court of Judicature at Bombay such costs to the extent of Rupees

in the manner and at the time that may be ordered by the Court.

Attestations—

I.
I.

As witness hereof I put my
signature this day of the
month of in the
Christian year before.

(Some Government Officer whose
designation should be stated.)

Signature.

The abovenamed surety having signed the above surety bond in my presence, the same is completed this day in my presence. The date as aforesaid.

(Signature of Government Officer.)

APPENDIX C. (Rules 153 and 154.)

FORM No. 1. (Rule 153.)

PETITION FOR LEAVE TO APPEAL UNDER ORDER XLV, RULE 3,
OF THE CODE OF CIVIL PROCEDURE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, CIVIL JURISDICTION.

Appeal No.	of 19 .
Suit No.	of 19 .

Appellant ;

versus

Respondent.

To

The Honourable the Chief Justice and other Justices of the Honourable Court
The petition of

Showeth—

1. That this suit was filed by _____ the plaintiff in the Court of the _____ Judge, and prayed (*here set out a concise statement of the plaint in suit and give amount or value of the subject-matter*).

2. That the said suit came on for hearing before the Judge of _____ on the _____ day of _____ and the said Judge on the _____ day of _____ passed the decree (or order).

3. That (*here insert name of appellant*) feeling himself aggrieved by the said decree (or order) filed a memorandum of appeal against the same on the _____ day of _____,

4. That the said appeal came on for argument before the Court of Appeal consisting of the Honourable _____ and the Honourable _____ on the _____ day of _____ and their Lordships on the _____ day of _____ passed the decree (or order).

5. That your petitioner feeling himself aggrieved by the said decree (or order) is desirous of appealing to His Majesty in Council from the same on the grounds following (*here state the grounds and number them consecutively i, ii, iii, etc.*):—

6. That the amount or value of the subject matter of the suit in the Court of first instance and of the matter in dispute on appeal to His Majesty in Council is Rs. 10,000 and upwards (or "that the decree (or order) from which an appeal is sought to His Majesty in Council involves a claim or question respecting property of the amount or value of Rs. 10,000 and upwards") (*If the appeal Court has affirmed the decree (or order) of the Court below add*) and that the appeal herein involves a substantial question of law.

7. That your petitioner is ready and willing to comply with the rules and orders as to giving security for costs and otherwise regulating appeals to His Majesty in Council.

Your petitioner therefore prays that your Lordships will be pleased—

- (a) to grant him a certificate that (*here state nature of certificate required as set out in para. 6*), and
- (b) to admit his petition and to transmit to His Majesty in Council, under the seal of this Honourable Court, a correct copy of the record so far as is material to the questions in dispute herein.

FORM No. 2. (Rule 154.)

NOTICE UNDER ORDER XLV. RULE 3, OF THE CODE OF CIVIL PROCEDURE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, CIVIL JURISDICTION.

Appeal No.	of 19 .
Suit No.	of 19 .

Appellant ;

versus

Respondent.

To (*fill in the name of opposite party*)

Take notice that on the day of 19 the
(*Appellant or Respondent naming him*) above named presented a petition to this Honourable Court for leave to appeal to His Majesty in Council from the decree (or order) of this Court passed on the day of 19 . and that you are hereby required within after the service of this notice upon you to show cause (if any you have but not otherwise) why a certificate should not be granted to the following effect, *viz.*, that (*here insert terms of certificate prayed for in the petition*)

Dated this day of 19 .

Registrar.

ORDER ADMITTING THE APPEAL.

This day of 19 .

FORM No. 4.

NOTICE OF ADMISSION OF APPEAL ISSUED TO THE RESPONDENT
UNDER ORDER XLV, RULE 8, CIVIL PROCEDURE CODE.

IN HIS MAJESTY'S HIGHT COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE, CIVIL JURISDICTION.

Civil Application No. of 19 .

{In First Appeal No. of 19 preferred against the decision
in Civil Suit No. of 19 on the file of the Judge
of)

(Original) . Appellant;

versus

(Original) . Respondent.

GEORGE V, by the Grace of God, of Great
Britain, Ireland and the British Domi-
nions, beyond the Seas, King, Defender
of the Faith, Empercr of India.

To

Greetings:

Whereas permission to prefer an appeal to His Majesty's Privy Council
against the decree in the said First Appeal was asked for by the Appel-
lant, and as required by Order XLV, rule 7, of the Code of Civil Procedure,
the security for the costs of the Respondent in this Appeal and the deposit
of Rs. 2,000 having been respectively completed and made in this Court,
THIS COURT DOTH DECLARE that the appeal in this matter to His
Majesty's Privy Council has been admitted on the date the of
19 .

Therefore take notice that correct copies of the record of the case
so far as is material to the questions in dispute in the said appeal shall
be transmitted with all convenient despatch to His Majesty's Privy Council.

Witness Sir
this day of

Chief Justice at Bombay aforesaid,
one thousand nine hundred and

By the Court,
Deputy Registrar.

Seal.

Sealer.

This day of 19 .

APPENDIX D. (Rule 157.)

NOTICE TO ADVOCATES, TO SETTLE THE INDEX IN THE PAPER BOOK
OF PRIVY COUNCIL APPEAL.

APPEAL No. OF 19 .

. Appellant to England;

versus

. Respondent to England

To

Esquire,

Advocate for

Take notice that (1) an index of all documents included in the transcript record of the above Privy Council Appeal, and (2) a list of all other papers, etc., not so included have been prepared. You are requested to attend the Registrar's Office for the purpose of settling the index within one week from the date hereof, and in case you are not agreed, as to the documents to be included in or omitted from the transcript record, you should within two weeks from the date hereof, submit to the Registrar a list in the form given in paragraph (a) of rule 157 of the High Court Appellate Side Rules, together with a brief statement of the grounds on which the said documents or the specified portion thereof, you require to be included in or excluded from the transcript. .

This day of 19 .

Registrar.

APPENDIX E. (Rule 128.)

RULE FOR COMPUTING THE ADVOCATE'S FEE.

I. (a) In suits which decide on the merits the real dispute between the parties;

(b) In appeals from decrees (including preliminary decrees) other than appeals from execution proceedings which decide on the merits the real dispute between the parties;

(c) In applications, proceedings or appeals which decide on the merits the real dispute between the parties under the—

(i) Indian Succession Act, 1925, excepting applications or appeals falling under sub-clauses (ii) and (iii) of clause (e) of rule V,

(ii) Land Acquisition Act, 1894;

the amount of the Advocate's fee shall be computed on the amount or value of the subject matter in dispute in the suit, appeal, application or proceeding at the rates specified below :—

If the amount or the value of the subject matter in dispute does not exceed Rs. 2,000 at 5 per cent.

If such amount or value exceeds Rs. 2,000 but does not exceed Rs. 5,000, on Rs. 2,000 as above and on the remainder at 3 per cent.

If such amount or value exceeds Rs. 5,000 but does not exceed Rs. 10,000, on Rs. 5,000 as above and on the remainder at 2 per cent.

If such amount or value exceeds Rs. 10,000 but does not exceed Rs. 20,000, on Rs. 10,000 as above and on the remainder at 1 per cent.

If such amount or value exceeds Rs. 20,000, on Rs. 20,000 as above and on the remainder at $\frac{1}{2}$ per cent.

Exception.—The amount of advocate's fees in a suit, appeal application, or proceeding between landlord and tenant shall be calculated on the amount or value of the claim for the purpose of court fees and not on the amount or value of the claim for the purposes of jurisdiction.

Provided that the amount may at the discretion of the court be calculated on the amount or value of the claim for the purposes of jurisdiction when the court is of opinion, having regard to the labour involved in the preparation of the case, or to the complexity of the issue arising therein, that the higher rate of valuation is appropriate.

II. (a) In appeals from orders.

(b) In Civil applications or proceedings other than applications and proceedings necessary for the progress of a suit or appeal and other than applications, proceedings or appeals falling under rules I, IV and V, and

(c) In all other cases not otherwise provided for, the amount of the advocates' fee to be allowed shall be $\frac{1}{4}$ of that payable according to the rates specified in rule I.

III. The fee prescribed in rules I and II shall be taken to be the remuneration for the advocate's services until the final decree or order in the suit, appeal, application, reference or proceeding is passed.

IV. In execution proceedings or in appeals in execution proceedings the advocate's fee to be allowed shall be $\frac{1}{4}$ th of the fee calculated at the rates specified in Rule I on the amount or value of the relief or money claimed in the application to execute the decree. Such fee shall be chargeable on the first application and on every subsequent contested application.

V. (a) In any reference made to the High Court under section 113 of the Code of Civil Procedure, 1908,

(b) in any application to the High Court under Section 115 of the said Code,

(c) in any application to the High Court under section 25 of the Provincial Small Cause Courts Act, 1887,

(d) in any application for the exercise of the High Court's Revisional jurisdiction in civil matters,

(e) in all applications or appeals under—

- (i) the Guardian and Wards Act, 1890,
- (ii) Part X of the Indian Succession Act, 1925,
- (iii) Part VII of the Indian Succession Act, 1925,
- (iv) the Indian Trust Act, 1882,
- (v) the Provincial Insolvency Act, 1920,

(vi) any other special or local Act,

a sum of Rs. 30 shall be allowed as the Advocate's fee.

VI. In no case, whether specially provided for in this Appendix or otherwise shall the Advocate's fee payable in any civil suit, appeal (including an appeal from execution proceedings), application, or proceeding other than execution proceedings be less than—

(a) Rs. 30 in the High Court,

(b) Rs. 15 in a District Court,

(c) Rs. 15 in the Court of a Subordinate Judge, subject to the provisions of clause (d) and the proviso below,

(d) Rs. 5 in the Court of a Subordinate Judge in suit of the nature cognizable by a Court of Small Causes or in the Court of a Jagirdar or Inamdar exercising jurisdiction under Bombay Regulation XIII of 1830 and Act XV of 1840, or in the Court of a Mamlatdar under the Mamlatdars' Court's Act, 1906:

Provided that suits by a superior holder for the recovery of his dues in the Court of a Subordinate Judge shall be governed by clause (d) and not by clause (c) unless in the opinion of the Court the suit involves questions of a complicated nature affecting title to land.

THE AMENDED LETTERS PATENT OF THE BOMBAY HIGH COURT.

LETTERS PATENT OF THE HIGH COURT OF JUDICATURE FOR THE PRESIDENCY OF BOMBAY, BEARING DATE THE TWENTY-EIGHTH DAY OF DECEMBER, IN THE TWENTY-NINTH YEAR OF THE REIGN OF VICTORIA, IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SIXTY-FIVE.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To all to whom these Presents shall come greeting: Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty-fifth

Recital of
Act 24 &
25 Vict.,
cap. 104.

Years of our Reign, intituled "An Act for establishing High Courts of Judicature in India," it was amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom to erect and establish a High Court of Judicature at Bombay, for the Presidency, of Bombay aforesaid, and that such High Court should consist of a Chief Justice and as many judges not exceeding Fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that the persons who, at the time of establishment of such High Court, were Judges of the Supreme Court of Judicature and peermanent Judges of the Court of Sudder Dewanee Adawlut or Sudder Foujdaree Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose and, the Chief Justice of such Supreme Court should become the Chief Justice of such High Court and that upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewanee Adawlut and Sudder Foujdaree Adawlut at Bombay, in the said Presidency, should be abolished:

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority, for and in relation to the administration of justice in the said Presidency, as her Majesty might, by such Letters Patent as aforesaid, grant and direct; subject however, to such directions and limitations, as to the exercise of original civil and criminal jurisdiction, beyond the limits of the Presidency town, as might be prescribed thereby; and save as by such Letters Patent might be otherwise directed, and subject, and without prejudice to the legislative powers in relation

to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act, at the time of abolition of such lastmentioned Courts.

And wehereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Twenty-sixth day of June in the Twenty-fifth Year of Our Reign, in the year of our Lord One thousand Eight hundred and Sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish at Bombay, for the Presidency of Bombay aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Bombay, and did thereby constitute the said Court to be a Court of Record; and whereas We did thereby and ordain that the said High Court of Judicature at Bombay should, until further or other provision should be made by Us or Our heirs and successors, in that behalf, in accordance with the recited Act, consist of a Chief Justice and six Judges, and did thereby constitute and appoint certain persons, being respectively qualified as in the said Act is declared, to be Judges of the said High Court, and whereas on the Sixth day of July One thousand Eight hundred and Sixty-three We did, in accordance with the provisions of the said recited Act, increase the number of the Judges of the said Court to a Chief Justice and seven Judges:

And whereas by the said recited Act it is declared S. 17.
lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established,

and to grant and make such other powers and provisions, as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:

Title.

And whereas by the Act of the Twenty-eighth of Our Reign, chapter fifteen, entitled, "An Act to extend the Term for granting fresh Letters Patent for the High Court in India, and to make further provision respecting the territorial jurisdiction of the said Courts", the time for issuing fresh Letters Patent has been extended to the First of January One thousand Eight hundred and Sixty-six:

And whereas in order to make further provision respecting the constitution of the said High Court, and the administration of justice thereby, it is expedient that the said Letters Patent, dated the Twenty-sixth of June One thousand Eight hundred and Sixty-two should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent:

Revocation
of Letters
Patent of
1862.

1. Now know ye that We, upon full consideration of the premises, and of Our especial grace, certain knowledge, and mere motion, have thought fit to revoke, and do by these presents(from and after the date of the publication thereof, as hereinafter provided, and subject to the provisions thereof,) revoke our said Letters Patent of the Twenty-sixth of June One thousand Eight hundred and Sixty-two, except so far as the Letters Patent of the Fourth Year of His Majesty King George the Fourth dated the Eighth day of December One thousand Eight hundred and Twenty-three, establishing a Supreme Court of Judicature at Bombay, were revoked or determined thereby.

High Court
at Bombay
to be continued.

2. And We do by these presents grant, direct, and ordain that, notwithstanding the revocation of the said Letters Patent of the Twenty-sixth of June One

thousand Eight hundred and Sixty-two, the High Court of Judicature, called the High Court of Judicature at Bombay, shall be and continue as from the time of the original erection and establishment thereof, the High Court of Judicature at Bombay for the Presidency of Bombay aforesaid, and that the said Court shall be and continue a Court of Record and that all proceedings commenced in the said High Court, prior to the date of the publication of these Letters Patent, shall be continued and depend in the said High Court as if they had commenced in the High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force, except so far as the same are altered hereby until the same are altered by competent authority.

3. And We do hereby appoint and ordain, that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice and Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Bombay, shall continue to be the Chief Justice and Judges, or acting Chief Justice or Judges, of the said High Court, until further or other provision shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

Judges of
the said
High Court
to be con-
tinued.

4. And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at Bombay, appointed by virtue of the said Letters Patent of the Twenty-sixth of June One thousand Eight hundred and Sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment, and he shall be subject to the like power of removal, regulations and provisions as if he were appointed by virtue of these Letters Patent.

Clerks, etc.,
of the said
High Court
to be con-
tinued.

Declaration
to be made
by Judges.

5. And We do hereby ordain that the Chief Justice and every Judge who shall be from time to time appointed to the said High Court of Judicature at Bombay, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor in Council may commission to receive it :—

“I, A. B., appointed Chief Justice [*or a Judge*] of the High Court of Judicature at Bombay, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment”.

Seal.

6. And We do hereby grant, ordain, and appoint that the said High Court of Judicature at Bombay shall have, and use as occasion may require, a seal bearing a device and impression of Our Royal Arms, within an exergue or label surrounding the same, with this inscription: “The Seal of the High Court at Bombay”. And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of Section 7 of the said recited Act; and We do further grant, ordain and appoint, that whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed, shall be vacant, the said High Court shall be and is hereby authorised and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

Writs, etc.,
to issue in
name of the
Crown and
under Seal.

7. And We do hereby grant, ordain, and appoint that all writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded

by the said High Court of Judicature at Bombay, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

8. And We do hereby authorise and empower the Chief Justice of the said High Court of Judicature at Bombay from time to time, as occasion may require and subject to any rules and restrictions which may be prescribed by the Governor in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall from time to time appoint for each office and place respectively, and as the Governor in Council, subject to the control of the Governor-General in Council, shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid, shall be resident within the limits of the jurisdiction of the said Court so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

Appointment
of Officers.

Admission of Advocates, Vakeels, and Attorneys.

9. And We do hereby authorize and empower the said High Court of Judicature at Bombay to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys as to the said High Court,

Powers of
High Court
in admitting
Advocates,
Vakeels, and
Attorneys,

shall seem meet; and such Advocates, Vakeels and Attorneys shall be and are hereby authorised to appear for the suitors of the said High Court, and to plead or to act, or to plead and act for the said suitors according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

In making rules for the qualifications, etc., of Advocates, Vakeels, and Attorneys.

10. And We do hereby ordain that the said High Court of Judicature at Bombay shall have power to make rules for the qualification and admission of proper person to be Advocates, Vakeels and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakeels, or Attorneys-at-law; and no person whatsoever but such Advocates, Vakeels, or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction of the High Court.

Local limits of the ordinary original jurisdiction of the High Court.

11. And We do hereby ordain that the said High Court of Judicature at Bombay shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time, be declared and prescribed by any law made by the Governor in Council, and until some local limits shall be so declared and prescribed within the limits of the local jurisdiction of the said High Court of Bombay at the date of the publication of these presents, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

Original jurisdiction as to suits.

12. And We do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other

immovable property such land or property shall be situated, or in all other cases if the cause of action shall have been first obtained in part within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, in which the debt, or damage, or value of property sued for does not exceed one hundred rupees.

13. And We do further ordain that the said High Court of Judicature at Bombay shall have power to remove, and to try and determine, as a Court of extraordinary original civil jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Bombay, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the Proceedings of the said High Court.

14. And We do further ordain that where plaintiff has several causes of action against defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make order for trial of the same as to the said High Court shall seem fit.

15. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the super-

Extraordi-
nary original
civil juris-
diction.

Joinder of
several
causes of
action.

Appeal to
the High
Court from
Judges of
the Court.

intendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of the Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, made on or after the first day of February one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.

**Appeal from
Courts in the
Provinces.**

16. And We do further ordain that the said High Court of Judicature at Bombay shall be a Court of appeal from the Civil Courts of the Presidency of Bombay, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

**Jurisdiction
as to infants
and lunatics.**

17. And We do further ordain that the said High Court of Judicature at Bombay shall have the like power and authority with respect to the persons and estate of infants, idiots, and lunatics, within the Bombay Presidency, as that which was vested in the said High Court immediately before the publication of these presents.

18. And We do further ordain that the Court for Relief of Insolvent Debtors at Bombay shall be held before one of the Judges of the said Court of Judicature at Bombay, and the said High Court and any such Judge thereof, shall have and exercise, within the Presidency of Bombay, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India.

Provision
with respect
to the insol-
vent Court.

LAW TO BE ADMINISTERED BY THE HIGH COURT.

19. And We do further ordain that with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Bombay in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

By the High
Court in the
exercise of
ordinary
original civil
jurisdiction.

20. And We do further ordain that with respect to the law or equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature at Bombay in the exercise of its extraordinary original civil jurisdiction such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

In the exer-
cise of ex-
traordinary
original civil
jurisdiction.

21. And We do further ordain that with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature at Bombay to each case coming before it in the exercise of its appellate jurisdiction such law or equity and rule of good conscience shall be the law or equity and rule of good conscience with the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

By the High
Court in the
exercise of
appellate
jurisdiction.

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EXERCISE OF JURISDICTION ELSEWHERE THAN
AT THE ORDINARY PLACE OF SITTING OF
THE HIGH COURT.

Judges may
be author-
ized to sit in
any places
by way of
circuit or
special
commission.

31. And We do further ordain that whenever it shall appear to the Governor in Council convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act vested in the said High Court of Judicature at Bombay should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.

Civil.

32. And We do further ordain that the said High Court of Judicature at Bombay shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India, as may now be exercised by the said High Court.

Criminal.

33. And We do further ordain that the said High Court of Judicature at Bombay shall have and exercise all such criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or Vice-Admiralty, or otherwise in connection with maritime matters of prize.

TESTAMENTARY AND INTESTATE JURISDICTION.

Testamen-
tary and
intestate
jurisdiction.

34. And We do further ordain that the said High Court of Judicature at Bombay shall have the like power and authority as that which may now be lawfully exercised by the said High Court in relation to the granting of probates of last wills and testa-

ments and letters of administration of the goods, chattels, credits and all other effects whatsoever, of persons dying intestate, whether within or without the Presidency of Bombay: Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probates and letters of administration.

MATRIMONIAL JURISDICTION.

35. And We do further ordain that the said High Court of Judicature at Bombay shall have jurisdiction within the Presidency of Bombay in matters matrimonial between Our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.

Matrimonial
Jurisdiction.

POWERS OF SINGLE JUDGES AND DIVISION COURTS.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Bombay in the exercise of its original or appellate jurisdiction, may be performed by any Judge or any Division Court thereof, appointed or constituted for such purpose, in pursuance of section One hundred and eight of the Government of India Act, 1915, and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to

Single
Judges and
Division
Courts.

the opinion of the majority of the Judges who have heard the case including those who first heard it.

CIVIL PROCEDURE.

Regulation
of proceed-
ings.

37. And We do further ordain that it shall be lawful for the said High Court of Judicature at Bombay from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty, intestate, and matrimonial jurisdiction respectively: Provided always that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No. VIII of 1859, and the provisions of any law which has been made amending or altering the same by competent legislative authority for India.

* * * *

APPEALS TO PRIVY COUNCIL.

Power to
appeal.

39. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature at Bombay made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provisions contained in the fifteenth clause of these presents: Provided in either case that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees, or from any other final judgment, decree, or order made either

on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council, subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency, except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

40. And We further ordain that it shall be lawful for the said High Court of Judicature at Bombay, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences.

Appeal from
interlocutory
judgments.

41. And We do further ordain that from any judgment, order, or sentence of the said High Court of Judicature at Bombay made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as

Appeal in
criminal
cases, etc.

We may, with the advice of Our Privy Council, hereafter make in that behalf.

Rule as to transmission of copies of evidence and other documents.

42. And We do further ordain that in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at Bombay to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed such judgments and orders as We, Our heirs or successors in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders or other order or rule of the said High Court should or might have been executed.

CALLS FOR RECORDS, ETC., BY THE GOVERNMENT.

High Court to comply with requisition from Government for records, etc.

43. And it is Our further will and pleasure that the said High Court of Judicature at Bombay shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

Power of Indian legislature preserved.

44. And we do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor

General in Legislative Council and also of the Governor General in Council under section Seventy-one of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section Seventy-two of that Act and may be in all respects amended and altered thereby.

45. And it is Our further will and pleasure that these Letters Patent shall be published by the Governor in Council and shall come into operation from and after the date of such publication, and that from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent granted by His Majesty King George the Fourth as was not revoked or determined by the said Letters Patent of the Twenty-sixth of June One thousand Eight hundred and Sixty-two, and is consistent with these Letters Patent, shall cease, determine, and be utterly void to all intents and purposes whatsoever.

Provisions
of former
Letters
Patent in-
consistent
with these
Letters
Patent to
be void.

IN WITNESS whereof We have caused these Our Letters to be made Patent, Witness Ourselves at Westminster, the Twenty-eighth Day of December, in the Twenty-ninth Year of Our reign.

MADRAS HIGH COURT RULES

[ORDINARY ORIGINAL CIVIL JURISDICTION.]

ORDER XXVII.

APPEALS.

1. A memorandum of appeal shall be headed as in Form No. 2 and shall be accompanied by a certificate copy of the decree and judgment, or order amounting to a judgment appealed from, and a notice to the respondent, in Form No. 45, and also a copy thereof, signed by the appellant, or his pleader.

[=Old Rr. 347-361; cf. R.S.C., O. 58]

The provisions of Order IV, rules 2 to 4 of these rules, inclusive, with respect to summons to a defendant shall apply to the said notice and copy.

2. The appellant shall, with his memorandum of appeal present an application for a copy of the transcript of the evidence taken down on shorthand, if any; within fourteen days from the date when the Registrar intimates the cost of making such transcript the appellant shall bring into Court court-fee stamps for the amount specified in the said intimation and, in default, the Registrar shall post the case for the orders of the Master. Upon the required court-fee stamps being brought into Court the Registrar shall prepare two copies of the said transcript, one for the use of the Court and one for the use of the appellant.

The costs of such copies shall be costs in the appeal.

3. A transcript may be made and a copy supplied to the applicant in accordance with Order XVI, Rule 12 of these rules. A copy of the transcript must, at the same time, be paid for by the applicant for the use of the appellate Court.

3 (a). When the party or the pleader intimates under Rule 12 (1) of Order XVI that a transcript is required, the cost of the preparation of the copy or copies applied for shall be calculated by the officer and intimated to the party or his pleader, who within three days of the receipt of the said intimation shall deposit the necessary charges into Court. The transcript shall then be made and copies supplied according to the rule regulating the supply of copies.

4. In any case in which the appellant does not propose to rely for the purpose of the appeal on any oral evidence adduced in the case, he shall file a statement to that effect along with his memorandum of appeal and it shall not then be necessary to apply

for or obtain or print either the transcript of the shorthand notes or the Judge's notes of evidence.

In cases in which the appellant has filed such statement the respondent shall be at liberty within fourteen days of his filing his memorandum of appearance to apply for a copy of the transcript of the evidence of Judge's notes of evidence as the case may be and the procedure indicated in rule 2 above shall be followed and the transcript or notes of evidence shall be part of the respondent's case.

5. If the respondent intends to defend the appeal, he shall within fourteen days from the date of service of the notice of appeal, or within such other time as may be fixed in the notice of appeal by the Registrar, file in Court, and deliver to the appellant, a memorandum of appearance, in Form No. 46.

[=Old R. 350; *cf.* R.S.C., O. 58, R. 3.]

The respondent or his pleader shall, at any time after filing his memorandum of appearance, be entitled to obtain on application to the appellant or his pleader a list of all the papers and documents to be included in the appellant's case.

6. The appellant's case shall consist of the following documents arranged so far as possible in the following order:—

- (1) Index;
- (2) Complaint or original petition;
- (3) Written statement;
- (4) Issues, and other relevant interlocutory proceedings;
- (5) Judgment;
- (6) Decree or order;
- (7) Memorandum of appeal;
- (8) Transcript or notes of evidence, if any;
- (9) Such other papers as are relevant and necessary for the purposes of the appeal, which shall

be arranged according to their exhibit marks, if any, and otherwise in chronological order.

The respondent's case shall consist of the memorandum of objections (if any) and any proceedings or exhibits not printed by the appellant which are relevant or necessary for the purposes of the appeal or memorandum of objections, together with an index.

7. The case of the appellant, or respondent, shall be printed in accordance with Order 11, rule 1, of these rules, and shall be properly paged, and furnished with an index, which shall contain the description and date of documents in chronological order. It shall not be necessary to print the cause-title, or other formal parts, of the several proceedings, except in the case of the first pleading, and of the memorandum of appeal.

8. If the appellant desires that the printing of his case should be done by the Court, he shall file along with his Memorandum of Appeal or within such other time as may be allowed an application for translation and printing in the form prescribed for first appeals under the Code.

If the respondent desires that his case should be printed by the Court, he shall file a similar application within fourteen days after filing his Memorandum of Appearance.

In cases in which the appellant or respondent elects to print his own case privately he shall file the proper number of printed copies in Court, within two months of the filing of the Memorandum of Appeal or Memorandum of Appearance and the same shall be examined, and compared with the original record, by an officer of the Court.

The party printing shall, on demand in writing, furnish to any other party to the appeal, and upon payment of the usual charges for printed copies, such copies of his case as may be required, not exceeding five.

9. At any time after the admission of the appeal, any party may apply upon notice of motion, with respect to the following matters:—

(1) that the appeal may be rejected, on any ground on which the admission thereof might have been refused by the Court;

(2) that any other party may be ordered to give security for the costs of the appeal or of the original suit or of both.

(3) for a stay of execution.

Unless otherwise ordered, not less than two clear days' notice of the application shall be given to the opposite party.

10. Except in cases where the directions of the Court are necessary, applications relating to the matters hereunder mentioned shall be made before and heard by the Master on Master's summons :—

(1) for an order for change of pleaders;

(2) for issue of fresh notice of an appeal or other process or for an order for substituted service of notice of appeal or other process;

(3) for an order permitting the withdrawal of an appeal by consent or where the other side has not appeared;

(4) for appointment or discharge of a next friend or guardian *ad litem* to a minor;

(5) for entering in the record the name of the representative of a deceased appellant, petitioner or respondent;

(6) that the printings of the whole, or a specified part, of the record may be dispensed with;

(7) all other matters which are merely processual or relate to the preparation of the appeal.

Provided that the Master may in his discretion direct that any application may be posted before a bench for disposal.

The Master shall have power to make an order for payment of costs of any application heard by him.

11. In case of urgency, a memorandum of appeal, or a notice of motion, may be presented to the first division bench or a Judge, sitting for the disposal of civil business, and the Court may thereupon make such order as it thinks fit.

12. If the Master dispenses with printing the record, the appellant shall unless otherwise ordered, within 14 days from the date of the order dispensing with such printing, file in Court three copies of the pleadings in the Court of first instance, and in the appellate Court, and of the judgment, and decree or order, appealed against, for the use of the Court. If a copy of the Judge's notes had been granted to the appellant, or a shorthand note has been taken, he shall at the same time file three copies thereof.

13. The preparation and printing of the record and the payment of charges therefor shall be regulated by the rules for the time being in force relating to the first appeals under the Code.

Special Rules relating to Appeals from Orders.

14. An appeal from an order shall be made to the Court by a Notice of Motion stamped with the fee prescribed by serial number 36 of Appendix II of the High Court Fees Rules, 1925. It shall be issued in the same manner as a Notice of Motion on the Original Side and shall be served not less than ten clear days before the date fixed for hearing.

15. The appellant shall, seven days before the date fixed for hearing, file in Court three typed copies of the Judgment or Order appealed against and of all pleadings, affidavits or documents used or read at the original hearing on which he intends to rely or to which he intends to refer.

16. The respondent shall file in Court three days before the hearing three typed copies of all pleadings, affidavits or documents used or read at the original hearing on which he intends to rely or to which he intends to refer.

17. Such notice of motion shall be posted before the bench hearing appeals from the Original Side not less than 14 days after the date of issue. Such appeal from an order may thereupon be disposed of without printing, and the costs of supplying the typed copies filed by the successful party to the Court shall be costs in the appeal.

Paupers.

18. An application for leave to appeal, or defend an appeal, *in forma pauperis*, shall be made by notice of motion. If the application is made by an appellant, it shall be entitled to the matter of the intended appeal and shall be accompanied by a memorandum of appeal containing the schedule of the property prescribed by Order XXXIII, Rule 2 of the Code, and signed and verified by the applicant. If an application is made by a respondent, it shall be accompanied by an affidavit containing the said schedule of property.

19. If an enquiry into the pauperism of the applicant is directed, the application shall be adjourned to a fixed day and the Registrar shall insert the same in the summons as the return-day. The applicant shall take out the summons in the manner prescribed by Order XIII, Rule 1 of these rules; and shall deliver the copies thereof, together with the prescribed fees, to the Sheriff, for service on the Government Solicitor and on the opposite parties; or, if a party is resident beyond the local limits of the jurisdiction, shall apply to the Registrar for transmission thereof to the proper authority, for service on him.

An affidavit of service shall be filed in Court not less than two days before the return-day.

20. Subject to the provisions of this order, these rules shall, so far as the same are applicable, apply to all proceedings in appeals from the original side of the Court.

RULES OF THE HIGH COURT, MADRAS

Appellate Side.

[*Brought upto July, 1933.*]

INTRODUCTORY RULE.

The following Rules and Orders are issued under the powers vested in the High Court by Secs. 13 and 14 of 24 and 25 Vict., c. 104, [Sec. 108, Government of India Act (V and VI Geo. V, c. 61)], by the Letters Patent of the High Court of Judicature at Madras, 1865, by the Code of Civil Procedure, and by the Court Fees Act, and may be cited as "The Rules of the High Court, Madras, Appellate Side." They shall come into force on 1st January, 1905, and shall also apply, so far as may be practicable, to all proceedings taken on and after that day in all causes and matters then pending on the Appellate Side of the Court.

The said Rules and Orders shall stand in lieu of all existing rules of the High Court of Madras, Appellate Side, treating of matters contained in the aforesaid rules and such existing rules in so far as they apply to the High Court of Madras, Appellate Side, are hereby annulled.

CHAPTER I.

CONSTITUTION OF BENCHES.

Single Judge.

1. The following matters may be heard and determined by one Judge: provided that the Judge before whom the matter is posted for hearing may, at any time, adjourn it for hearing and determination by a Bench of two Judges:—

(1) Every application—

(a) for determining in which of several Courts having jurisdiction a suit shall be heard;

- (b) for the admission of an appeal *in forma pauperis*;
 - (c) under Section 115 of the Code of Civil Procedure, 1908, and under Section 25 of the Provincial Small Cause Courts Act (IX of 1887) ;
 - (d) of an interlocutory character in appeals and other matters pending in the High Court except such of the applications as are posted before the Registrar for orders as to process-fees, payment of batta, etc. ;
 - (e) for the admission of appeal from the judgment or order of any Criminal Court ;
 - (f) for the exercise by the High Court of its power to revise the proceedings of any Criminal Court ;
 - (g) made or transferred to the High Court to be entertained in the exercise of its original civil jurisdiction ;
 - (h) for the transfer of any suit, appeal or other proceeding or proceedings in execution of a decree from one of the Civil Courts subordinate to the High Court to another of such Courts or to the High Court ;
 - (i) for the transfer of an enquiry or trial or other proceeding from one of the Criminal Courts subordinate to the High Court to another of such Courts or to the High Court.
 - (j) for the issue of a writ or *certiorari*.
- (2) Every reference by a Criminal Court for the revision of the proceedings of a subordinate Criminal Court ;
- (3) Every appeal—
- (a) from the judgment or order of a Criminal Court except in cases in which the appel-

lant or a person tried with him has been sentenced to death;

- (b) from an original decree when such appeal relates to costs only;
- (c) from an order under Section 104 and Order XLIII, Rule 1 of the Code of Civil Procedure, except an order of the kind mentioned in clauses (c), (d) and (j) of the said rule and in clause (b) of sub-section (1) of the said section;
- (d) from an order, though it be of the kind excepted in (c), when such appeal is posted for hearing under Order XLI, Rule II of the Code of Civil Procedure;
- (e) from an appellate decree or order;
- (f) from an order under Section 75 (3) of the Provincial Insolvency Act;
- (g) from an order of a Civil Court under Section 476 of the Code of Criminal Procedure;
- (h) from a decree of the Madras City Civil Court where the value of the appeal does not exceed Rs. 500.

(4) Every suit or petition made or transferred to the High Court to be tried in the exercise of its original civil jurisdiction;

(5) Every commitment made or transferred to the High Court to be tried in the exercise of its original criminal jurisdiction;

(6) Every matter referred for determination by the Registrar; and

(7) Every other application not otherwise specially provided for.

Bench of two Judges.

2. The following matters may be heard and determined by a Bench of two Judges: provided that

if both Judges agree that the determination involves a question of law they may order that the matter, or the question of law, be referred to a Full Bench:—

(1) Every application, petition, suit or appeal referred by a Bench of one Judge;

(2) Every appeal

(a) from the decree or order of a Civil Court except those mentioned in Rule 1;

(b) from the judgment of a Criminal Court in which sentence of death has been passed on the appellant or on a person tried with him;

(3) Every reference

(a) from a Civil Court;

(b) for the confirmation of a sentence of death;

(c) under Sec. 307, Code of Criminal Procedure;

(4) Every application

(a) for the admission of an appeal presented after the expiry of the period allowed by the Law of Limitation;

(b) under O. 45, R. 2 of the Code of Civil Procedure for leave to appeal to His Majesty in Council;

(c) for the issue of a writ of *Habeas corpus*;

2-A. All applications for writ of *Habeas corpus* shall go before a Bench of Judges dealing with criminal work.

3. When a question of law is referred to a Full Bench, the Full Bench may finally decide the case or return it with an expression of its opinion upon the question referred for final adjudication by the Court which referred the question, and, in case of necessity in consequence of the absence of any or either of the referring Judges, for the ultimate decision of another Court.

4. Notwithstanding anything hereinbefore contained to the contrary the original and appellate jurisdiction vested in the High Court may, during the vacation of the Court, be exercised by a single Judge

acting as the Vacation Judge, except in cases in which such jurisdiction must be exercised, under any law or regulation made by the Governor-General of India in Council, by more than one Judge.

Full Bench.

5. A Full Bench shall be a Bench of any number not less than three of the Judges for the time being present as Judges of the Court.

6. Anything in the foregoing rules to the contrary notwithstanding, the Chief Justice may direct that any application, petition, suit, appeal or reference shall be heard by a Full Bench as defined in these rules.

7. Appeals to the High Court, Appellate Side, under Sec. 15 of the Letters Patent, if from the judgment of a Court confirming the judgment of a lower Court under Sec. 98, Civil Procedure Code, shall be heard by a Court consisting of at least three Judges, including both or neither of the Judges of the Court from whose judgment the appeal is preferred, and, if from the judgment of a single Judge or from the judgment of one Judge of a Bench of two Judges, it shall be heard by a court consisting of at least two Judges other than the Judge or Judges who heard the appeal or matter.

8. Every enquiry under clause 10 of the Letters Patent, 1865, shall ordinarily be heard and determined by a Bench of three Judges.

9. Every matter or application before the Court on a certificate given by the Advocate-General under Sec. 26 of the Letters Patent shall be heard by a Full Bench.

CHAPTER II.

10. The powers and authorities which, under these or other rules or the practice of the High Court, are exercisable by the Registrar (except such as may, from time to time, be expressly excepted by the Chief

Justice) may be exercised by either of the Deputy Registrars, or by the Assistant Registrar, Appellate-Side.

11. Where any duty to be discharged under the Code of Civil Procedure, or these rules, or any other enactment or rules, is a duty which has heretofore been discharged by any officer, such duty shall, unless and until otherwise ordered, continue to be discharged by the same officer, or by such other officer as the Chief Justice may by order direct; and where any new duty is to be discharged, the proper officer to discharge the same shall be such officer as the Chief Justice may, from time to time, direct.

12. In addition to the powers conferred by other rules, the Registrar shall have the following duties and powers, subject to any special or general order made by the Chief Justice:

(i) 1. To receive all appeals, petitions and other proceedings.

2. To require any memorandum of appeal, petition, application, or other proceedings presented to the Court or to the Registrar to be amended in accordance with the procedure or practice of the Court or to be re-presented after such other requisition, as the Registrar is empowered to make, has been complied with: Provided that the Registrar shall, when so required, refer the matter to the Court.

3. To admit all appeals against the decrees or orders of Civil Courts and to issue notice to the respondents therein, provided that after the admission

(a) in appeals against original decrees and in appeals under clause 15 of the Letters Patent from judgments of single Judges passed in appeals from appellate decrees or orders, the Registrar shall issue notice forthwith.

(b) in appeals against appellate decrees he shall take the orders of a Judge whether notice

shall issue or the appeal be posted before a Judge for hearing under Rule 11 of Order XLI of the First Schedule of the Code of Civil Procedure, 1908.

(c) in all other appeals he shall determine whether notice shall issue at once or *whether* the case *is to be* posted before a Judge for orders, and

(d) *in revision petitions he shall take the orders of a Judge as to whether notice shall issue or the petition be posted before a Judge for hearing in the manner prescribed for appeals by Rule 11 of Order XLI of the First Schedule to the Code of Civil Procedure, 1908.*

4. To fix the date of hearing of any interlocutory matter.

5. To advance the hearing of cases posted as ready on the notice board of the Court.

6. To determine all cases referred to him under Rule 60-A and, on application made to him by petition, to extend the period prescribed for payment of process fees, provided the whole period shall not exceed four weeks.

7. To direct service under Order XLI-A, Rule 5.

8. *On application made to him by petition to dispense with the printing of the whole or any portion of the record under rules 73, 93, 101 and 106 of the Appellate Side Rules.*

9. To direct the translation and printing of documents referred to in Rule 85.

10. To make an order for the supply of copies of—

(a) records duly certified as correct copies;

(b) uncertified printed records; and

(c) rough translations of records which are not printed, under Rules 87 and 88.

11. To stop at his discretion the issue of all or any papers to any pleader who has failed to pay any fee or charges due to the Court.

12. To direct the return of the deposit referred to in Rule 75.

13. To make an order for change of pleaders (with the consent of the pleader on record).

14. To require any person or party to file evidence to be given upon affidavit with respect to any application or matter in respect of which he has power to exercise any discretion or to make any order.

15. To appoint or discharge a next friend or guardian *ad litem* to a minor (except in cases under appeal to His Majesty in Council), and to direct the amendment of the record accordingly.

16. To enter in the record the name of the representative of a deceased appellant, petitioner or respondent, except in cases under appeal to His Majesty in Council:

Provided that contested applications and applications presented out of time falling within clauses 15 and 16 above shall be posted before a Judge for disposal.

17. To make an order for leave to search the records of the Court under the rules in that behalf.

18. To dispose of all applications for copies of judicial records of, or in the custody of, the High Court, presented by persons who are not parties to the proceedings to which such records relate.

19. To determine whether any accounts which the parties to an appeal to His Majesty in Council have not specifically asked to be included are necessary to the appeal.

20. To call for further deposit when the deposit already made by the appellant in all appeal to His Majesty in Council is not sufficient to defray the cost of preparing the records.

21. To order payment of the interest accruing on Government promissory notes deposited by a party to an appeal to His Majesty in Council as security under Order XLV, Rule 7 of the Code of Civil Procedure, and to order the refund of any unexpended balance of the amount deposited by him under Order XLV.

22. To make an order for payment of costs of any application heard by him.

23. To give directions as to the preparation of the record in connected appeals.

24. To dispense with the affidavit required by Rule 44.

25. To allow from time to time any period or periods exceeding ten days in all for filing slips, furnishing information or for any similar act necessary to make an appeal or a petition complete.

26. To extend the period mentioned in Order 41-A, Rule 2, as follows:—

(a) If the respondent resides beyond the limits of the Presidency of Madras, but within the limits of India or Ceylon, to not more than eight weeks.

(b) If the respondent resides beyond the limits of India or Ceylon, to not more than ten weeks.

27. To extend the time originally fixed for furnishing security or to grant further time when default has been made in furnishing security within the time originally fixed, on an application made to him by petition.

28. To extend the time mentioned in Rule 60 to four weeks in all from the time of notice on the notice board.

29. To extend the time prescribed by Rule 79 for a period not exceeding ten days.

30. To extend the time for making the deposit referred to in Rule 92.

31. To extend upon good cause for a period not exceeding ten days the time limited by the rules relating to the preparation of the record for filing a list or making a deposit.

32. To order the omission of superfluous matter from the printed record under Rule 94 and to consider and dispose of claims by the unsuccessful party for the cost of unnecessary printing done at the instance of the other party.

(ii) To refer any matter before him to the Court.

12A. The Chief Justice may, by general or special order, confer upon the Registrar power to hear and determine the classes of applications set forth below:

Provided that the Registrar while exercising such powers at his discretion, may refer any such application before him for the decision of the Court:

Provided also that at the request of any party dissatisfied with the decision of the Registrar, the Registrar shall post the matter for the orders of a Bench of one Judge.

(1) Application to extend beyond four weeks—

(i) the time allowed by rule 12 (6) for payment of process fees,

(ii) the time allowed by rule 12 (28) for depositing fee for service of a fresh notice.

(a) Applications to extend beyond ten days—the time allowed by Rule 12 (i) (25) for filing slips, etc.

(2) Applications to extend beyond ten days—

(i) the time prescribed by rule 79,

(ii) the time prescribed by rule 92,

(iii) the time prescribed by the rules relating to the preparation of the record, for filing a list or making a deposit.

(3) Applications for extension of time to enter appearance.

(4) Applications for an order directing substituted service under Order V, rule 20, or for an order under O. XLI-A, rule 5 of the Code of Civil Procedure.

(5) Application for dispensing with printing or for leave to use previously printed papers.

(6) Applications to call for documents not produced by a party.

(7) Applications by a guardian *ad litem* for an order under Order XXXII, rule 4 (4) of the Code of Civil Procedure, as to the manner of incurring costs.

(8) Applications for the appointment of a guardian *ad litem* to persons of unsound mind in cases where they have been so found.

(9) Applications for excusing delay in a representation or in payment of deficit court-fee.

(10) Applications for amendment of cause-title, or for an order directing change of parties.

(11) Applications for amendment of grounds of appeal or for filing additional grounds.

(12) Applications for refund of court-fee paid under a *bona fide* mistake.

(13) Applications for leave to withdraw appearance.

(14) Applications for change of pleaders where the consent of the pleader on record is not obtained.

(15) Applications for the return of documents produced in pending cases.

(16) All applications excepted under R. 1 (1) (d) and referred to in the note thereunder.

(17) Applications to dispense with service of notice on respondents under the proviso to O. XLI, R. 14 (1) of the Code of Civil Procedure, 1908.

12-B. The time prescribed under these rules for the doing of any act shall be extended only on application made by a stamped petition, and the Registrar shall, wherever he considers it necessary, be at liberty to call for the production of a certificate showing the

dates on which the acts prescribed by the rules were done or should have been done, which certificate will be granted by the Deputy Registrar upon payment of a fee of Rs. 2 in court-fee stamps.

CHAPTER IV.

APPEALS FROM DECREES AND ORDERS.

34. All appeals, petitions and other proceedings shall be presented in person by the appellant or his pleader or the pleader's registered clerk.

The memorandum of appeal shall be accompanied by the fees prescribed for service of notice on the respondent, by the particulars for service of the same set out as in Form I of Appendix IV and by the receipt of the accountant of the Court for the sum mentioned in rules 75 and 100.

In the case of a memorandum of appeal or petition presented after the expiration of the time limited by law, the fee for service of notice of the appeal and the receipt for the deposit for the preparation of the record shall be lodged, if necessary, within seven days of the final order of the Court on the petition for extension of the period of limitation prescribed by O. XLI, R. 1 (3), Schedule I of the Code of Civil Procedure.

35. No proceeding or communication received by post or telegram shall be accepted.

36. Every memorandum of appeal and of objection shall contain a statement of the value of the appeal or objection for the purpose of the Court Fees Act.

36-A. In appeals and petitions which, under the rules and practice of the High Court, have to be posted before a Bench of two Judges for hearing, and which are not printed, the practitioners should furnish at the

time of filing an additional set of papers for the use of the second Judge.

37. (1) Every memorandum of appeal or petition which is presented after the expiration of the time limited by law and the petition for extension of time required by O. XLI, R. 1 (3), Schedule I of the Code of Civil Procedure shall be posted together before a Bench of two Judges and where notice is ordered to the respondent, the appellant shall within three days of such order bring into Court the notice prescribed by Rule 45 together with the fee prescribed for service of such notice and as many copies of the petition and affidavit as there are parties to be served and the petition shall be posted for hearing before a Bench of two Judges not less than 14 days after the service of notice on the respondent.

(2) Every memorandum of appeal or petition which is presented after the expiration of the time limited by law shall be accompanied by an affidavit explaining the delay. If any such memorandum of appeal or petition is presented without such affidavit, it shall, together with all papers presented therewith, be returned to the pleader or party presenting them with an endorsement as follows:—

This memorandum of appeal (or petition) has been presented——days out of time. The pleader (or party) is requested to explain the cause of the delay in order that the case may be posted in the Admission Court for the consideration of such explanation, and for orders thereon.

(3) Every memorandum of appeal or petition represented with such explanation shall be posted for orders before a Bench of two Judges and the Court may direct notice to the respondent of the presentation of the appeal and of the grounds on which the appellant contends that such presentation is within the period of limitation prescribed and the appellant shall within three days of such order bring into Court the

process fee required for the service of such notice on the respondent.

38. Notice of the date of hearing of an appeal from an appellate decree or order, posted before a Bench of two Judges for hearing under Order XLI, Rule 11, read where necessary with Order XLII or Order XLIII, shall be given by posting a list of appeals to be so heard on the notice board of the Court.

39. Where in an appeal appearance has been entered by a practitioner for the respondent or respondents before notice of the appeal is served on him or them, a copy of the notice shall be served by the office on the practitioner immediately on his entering appearance. Such notice shall be deemed to be a notice for the purposes of sub-rule (2), Rule 2 of Order XLI-A in the first schedule to the Code of Civil Procedure.

40. Unless otherwise ordered cases posted on the notice board of the Court as ready for hearing shall not be transferred to the daily cause list for hearing by the Court until the expiration of the following periods from the date of such posting:—

For first appeals	14 clear days.
„ appeals posted under Rule 38	3 „
„ all other appeals and matters	7 „

40-A. Subject to any orders to the contrary, cases transferred from the Rough List or from another Fair Cause List, or coming on after adjournment shall be posted at the bottom in the Daily Cause List for hearing arranged in the order in which they were filed in Court.

2. The following cases shall be given precedence in the Cause List:—

- (a) Cases in which the hearing has been directed to be expedited or advanced.
- (b) Part-heard cases and cases in which reports have been called for or findings have been submitted.

- (c) Cases which have been directed by Court to be posted to a further date or on the expiry of a specified period.
- (d) Cases in which there is a stay of Proceedings in the same suit or in other civil and criminal Courts.
- (e) Cases, the pendency of which causes delay in the disposal of cases pending in lower Courts.
- (f) Second Appeals in rent suits.
- (g) Original Side Appeals, City Civil Court Appeals and Letters Patent Appeals.
- (h) Appeals in Probate and Succession cases.
- (i) Appeals in Land Acquisition cases.
- (j) Appeals under special Acts such as the Indian Companies Act, Guardian and Wards Act, Insolvency Act ;
- (k) Cases of quasi-criminal nature such as contempt of Court.
- (l) Cases in which execution of decrees or orders of lower Court has been stayed.

(Fort St. George Gazette, dated 16th October 1935, Part II, Page 1216.)

40-B. An application to postpone or advance the hearing of, or otherwise with respect to, a case on the ready board shall be made by petition endorsed with the consent of, or on notice to, all parties who have entered an appearance and shall be supported by evidence to be given on affidavit. Unless otherwise ordered, the applicant shall pay the costs of all parties appearing upon the application.

40-C. An application with respect to a case posted in the daily cause list may be made orally to the Court before which it is posted upon notice to the other parties.

Reference and Revision Petitions.

41. Civil Revision Petitions under Section 107 of the Government of India Act, 1915, Section 115 of the

Code of Civil Procedure, 1908, or Section 25 of the Provincial Small Cause Courts Act, 1887, shall be accompanied by

- (1) a typewritten or printed copy of the decree or order which it is sought to revise,
- (2) a typewritten or printed copy of the judgment, if any, on which the decree or order is based, unless its production is dispensed with by the Court, and
- (3) a duly filled in and properly stamped memorandum in Form No. 1 of Appendix IV to these rules for issue of notice to respondents.
- (4) the receipt of the accountant of the Court for the sum mentioned in Rule 105-A.

41-A. (1) A list of Civil Revision Petitions admitted for hearing after notice or directed to be posted for disposal in the manner prescribed for appeals by Order XLI, Rule 11, Civil Procedure Code, shall be affixed to the notice board of the High Court as soon as practicable *after orders are obtained under Rule 12 (3) (d). Cases directed to be posted for disposal in the manner prescribed for appeals by Order XLI, Rule 11, Civil Procedure Code, shall be posted for hearing immediately after the expiry of one clear day from the date of affixture of the list on the notice board.*

(2) No application in Civil Revision shall be presented after ninety days from the date of the order complained of, provided that the Court may, on sufficient cause shown, excuse the delay in presentation.

Interlocutory Applications and Matters.

42. An application for leave to amend a memorandum of appeal or of objections or a petition of revision shall be made by petition upon notice to any party, who has entered an appearance, and shall set out the amendment prayed. If leave is granted the Court may ~~allow~~ further time for the preparation of

the record, and unless the Court otherwise directs the order shall be conditional upon payment by the appellant of the costs of the application and of any further translation and printing of the record.

43. When an issue is referred for trial and the finding of the Lower Court is returned, notice shall be given on the notice board of the Court, and any party desirous of objecting to the finding shall, unless otherwise ordered, within seven days after such notice, file in Court a memorandum of his objections and serve a copy thereof on the other party.

44. (1) An application with respect to any of the matters mentioned in these rules shall be made by a petition to the Court stating the provision of law under which relief is sought, and the order prayed and any evidence thereon shall be given by affidavit.

(2) The petition shall be presented to the Registrar or such officer as he shall appoint.

45. (1) If notice of the application is to be given, the applicant shall file in Court a notice to each party in Form No. 3 of Appendix IV and a copy thereof. The date of hearing shall be inserted in the notice and copy which shall be sealed with the Court seal. The applicant shall serve the copy upon the other party to the appeal in manner prescribed by rule 6 of Order XLI-A and shall take the signature of the party or his pleader upon the notice in acknowledgment of service, and where service is on the party shall file an affidavit in proof of service. Provided that in any case within rule 4 (2) of Order XLI-A service shall be made under rule 7 and the prescribed fee shall be filed with the petition.

(2) Unless the Court otherwise orders notice need not be given to a party who has not entered an appearance.

46. Unless otherwise ordered, the day fixed for hearing shall be not less than 14 days from the date

of presentation of the petition and the notice shall be served not less than seven days before the day so fixed.

47. (1) Any affidavit intended to be read in support of the petition shall be filed therewith and notice thereof shall be given to the other parties. If any party served with notice intends to use an affidavit upon the application, he shall, not less than three days before the hearing, file the same in Court and give notice thereof to the applicant.

(2) An affidavit in respect of which default has been made shall not be read in evidence, except by leave of the Court.

48. If the party intended to be served with notice is a respondent who has not entered an appearance, the applicant shall file the notice and the prescribed fees for service together with the petition, and a copy of any affidavit filed therewith, and thereupon the notice and copy of such affidavit shall be served in the same manner as a notice of appeal.

49. In case of urgency, the applicant may apply to the Registrar that the petition may be posted for hearing without notice to any party. If at the hearing notice is directed to be given, unless otherwise ordered, the Registrar shall insert in the notice a day for the further hearing not less than three weeks from the date of hearing.

50. (1) If on the day fixed for hearing it appears that notice has not been served, the Court may order notice to be issued or may dismiss the petition.

(2) If notice is ordered and is to be served through the Court, the applicant shall pay the prescribed fees for service of notice within three days after the date of the order directing notice, and if an interim order has been made upon the application it shall not be issued until the said fees have been paid.

(3) Unless otherwise ordered, the costs of the first notice only shall be allowed to the applicant upon taxation, and if it appears to the Court that the applicant is not exercising due diligence in service of notice, the Court may order him to pay all the casts of the application.

50-A. In the event of the Admission Judge of the day, being indisposed or otherwise unable to deal with admission work, the applicant should set out in his application to the Judge before whom he moves—

- (a) the reasons why the application should be regarded as imperatively urgent;
- (b) the dates on which the necessary documents were available; and
- (c) the cause of his not having applied in the ordinary course to the sitting Judge before..

APPEALS TO THE HIGH COURT UNDER CL. 15 OF THE LETTERS PATENT.

51. (1) An appeal under the said clause shall be preferred within 30 days from the date of the judgment appealed from, provided that the Court may in its discretion on good cause shown extend such period.

(2) In appeals not provided for by S. 4 of the Court Fees Act, 1870, the fee shall be levied at the same rates and in the same manner as in appeals falling under the said section, provided that the fee shall not be less than Rs. 10.

(3) Appeals under the Letters Patent from judgments of single Judges passed in appeals other than those from appellate decrees or orders shall be posted before a Bench of two Judges for orders whether notice shall issue.

(4) Rules 72, 84 to 90 and 100 shall so far as may be apply to the preparation of the record, provided that it shall not be necessary to translate or print any paper translated and printed in the appeal from the Lower Court.

(5) Rules 38 and 40 shall apply to the posting of appeals for hearing.

PETITIONS.

52. A petition shall, when presented by a pleader or attorney, bear his signature as pleader or attorney, and when presented by a party shall be signed or marked by him, and such signature or mark shall be acknowledged before the Registrar, the Deputy Registrar, the Assistant Registrar, the Sub-Assistant Registrars or the Managers, Appellate Side, or before the presiding officer of any Court or any Magistrate including a Village Magistrate, or a Sub-Registrar, Nazir, Deputy Nazir, Assistant Nazir, or a District or Taluk Board Member or Municipal Councillor, or any person upon whom a title has been conferred by Government who shall certify therein in the following form or to the like effect:—

The contents of this petition were explained by me, and the signature or mark (*signatures or marks*) made (*or acknowledged*) before me on the day of 19 .

52-A. Every petition or other matter filed in the High Court before the disposal of the main proceedings in the Lower Court shall mention the name and address of the pleader (if any) who represents the other party in the main proceedings in order that service may be effected in the manner provided in rule 62-A.

53. Petitions to the High Court shall not be filed unless presented by a pleader of the Court, or his registered gumastah, or a party.

54. Petitions which are couched in improper language, or which are illegible, or unnecessarily prolix, shall be returned for amendment.

54-A. Where in petitions for review presented to the High Court, notice is ordered to the opposite party, such notice shall be served on the pleader who represented that party in the main proceedings and

such service shall be deemed to be sufficient service on the party who appeared by such pleader. In cases, however, where the opposite parties or any of them have not appeared by a pleader in the main proceedings, the notice shall be served on the party direct.

CHAPTER V.

AFFIDAVITS.

55. (1) Every affidavit used in the High Court, Appellate Side, shall be entitled "In the High Court of Judicature, Appellate Side, Madras" and shall set forth the cause-title of the appeal or other matter in which the affidavit is sought to be used as evidence. An affidavit in support of, or in opposition to, an interlocutory application relating to an appeal, petition or other proceeding pending in the High Court shall also be entitled as made in such appeal, petition or other proceeding.

(2) Every person making an affidavit shall be described in such a manner as will serve to identify him clearly, that is to say, by the statement of his full name, the name of his father, his age, his caste, his profession or trade, and the place of his residence.

(3) An affidavit shall be confined to statements of fact and be divided into numbered paragraphs, each paragraph being confined as nearly as may be to a distinct portion of the subject.

(4) When the affidavit covers more than one side of a sheet of paper, the writing shall be on both sides of the sheet, and the declarant shall sign his name at the foot of each page of the affidavit.

(5) When the declarant speaks to any fact within his own knowledge, he shall do so directly and positively using the words "I make oath (*or affirm*) and say."

(6) When a particular fact is not within the declarant's own knowledge, but is stated upon information, the declarant shall use the words "I am informed by (*giving source of information if possible*) and verily believe it to be true", and set forth the grounds of his belief, if any.

56. (1) Affidavits intended for use in the Appellate Side of the High Court may be made before any of the Officers of the High Court, the Sub-Assistant Registrar, or the Managers, Appellate Side, or before the presiding officer of any Court or any Magistrate including a village Magistrate, or a Sub-Registrar, Nazir, Deputy Nazir, Assistant Nazir, or a District Board Member, or Municipal Councillor, or a member of the Legislative Council of the Governor of Madras or a member of the District Educational Council or a retired Gazetted Officer receiving pension from Government, or before a Commissioned Military Officer of the A.F.I., stationed in the Anamalais, or the Manager of the Office of the Board of Commissioners for the Hindu Religious Endowments, or any Superintendent or Inspector working under the Board or any person upon whom a title has been conferred by Government.

(*Fort St. George Gazette, Part II, dated 28th May 1935, page 643.*)

(2) Documents referred to by affidavits shall be referred to as exhibits and shall be marked in the same manner as exhibits and shall bear a certificate signed by the officer before whom the affidavit is taken in the form—

This is the exhibit marked 'A' (*or as the case may be*) referred to in the affidavit of A B, sworn (*or affirmed*) before me this day of 19 .

(Sd.) C. D.
(*Designation*).

(3) The officer or person before whom an affidavit is made shall state the day when and the place

where the same is taken and sign his name and description at the end in the form following:—

(Sd.) S. D.

Sworn (*or. solemnly affirmed*)
at on this day of 19
before me.

(Sd.) C. D.

(*Designation*).

(4) Alterations and interlineations, if any, shall, before the affidavit is sworn or affirmed, be authenticated by the initials of the officer or person before whom the affidavit is taken, and no affidavit having any alteration or interlineation, not so authenticated, or any erasure, shall, except with the leave of the Court, be filed or made use of in any manner. The number of any alterations or interlineations so authenticated shall be noted at the foot of each page under the initials of such officer or person. Each page shall be numbered at foot under the initials of the officer, thus—‘first page,’ ‘second page’ and to the number of the last page shall be added the words ‘..... and last page.’

(5) Every person making an affidavit, if not personally known to the officer or person before whom the affidavit is taken, shall be identified by some person known to the officer or person, and the officer or person shall specify at the foot of the affidavit the name and description of him by whom the identification was made. If the declarant is not known to the officer or person and cannot be identified as above, the impression of the thumb of the declarant’s left hand shall be taken at the foot of the last page of the affidavit and the following certificate shall be added to it:

“Certified that this is the impression of the thumb of the left hand of the declarant of the above affidavit.”

(Sd.) A. B.

(*Designation*).

(6) If the declarant is ignorant of the language in which the affidavit is written, or appears to be illiterate or blind, the officer or person shall cause the affidavit to be read to the person in his presence in a language which the declarant understands. When the affidavit has been explained to the declarant, he shall be sworn or affirmed in the usual manner, and the officer or person shall certify at the foot of the affidavit as follows:—

Sworn (*or solemnly affirmed*)
 at on this day
 of 19 before me
 the contents of this affidavit (*or*
solemn affirmation) and the ex-
 hibits therein referred to have
 been first truly and audibly read

(Sd.) S. D.

over to the declarant in ,
 he being unacquainted with ,
 (*or being blind*), who appeared
 perfectly to understand the same
 and made his mark thereto (*or*
signed his name) in my presence.

(Sd.) A. E.
 (*Designation*).

(7) In administering oaths and affirmations, the officer or person shall be guided by the provisions of the Indian Oaths Act (X of 1873).

The following forms are to be used:—

OATH.

“I, A B, swear by Almighty God that is my name and handwriting, and that the contents of this my affidavit are true.”

SOLEMN AFFIRMATION.

(a) “I, A B, solemnly affirm in the presence of Almighty God that that is my name and handwriting, and that the contents of this my affidavit are true.”

- (b) "I, A B, do solemnly, sincerely and truly declare and affirm that that is my name and handwriting, and that the contents of this my affidavit are true."
-

CHAPTER VI.

APPOINTMENT OF GUARDIAN.

57. Every application for the appointment of a guardian of a minor respondent shall be supported by an affidavit stating that the proposed guardian has no interest in the matter in question in the appeal adverse to that of the minor. No order shall be made on an application by an appellant unless notice of the application has been duly served upon the father or guardian of the minor or upon the person with whom the minor resides six clear days before the day named in the notice for the hearing of the application.

58. An application for the appointment of a guardian *ad litem* shall not be combined with an application for bringing on record the legal representatives of a deceased appellant or respondent. The applications shall be by separate petitions.

59. When a guardian *ad litem* of a minor respondent is appointed, and it is made to appear to the Court that the guardian is not in possession of any, or sufficient, funds for the conduct of the appeal on behalf of the respondent, and that the respondent will be prejudiced in his defence thereby, the Court may, from time to time, order the appellant to advance moneys to the guardian for the purpose of his defence, and all moneys so advanced shall form part of the costs of the appellant in the appeal. The order shall direct that the guardian do, as and when directed, file in Court an account of the moneys so received by him.

CHAPTER VII.

SERVICE OF NOTICES.

60. If any notice is returned unserved an intimation of that fact and of the reason why the notice has not been served shall be given on the notice-board, and, within 15 days from the date on which the intimation is so given, the appellant or his pleader shall, except when the notice has not been served because the respondent concerned is dead, deposit further fee for the service of a fresh notice and shall give the particulars necessary for serving it, and, if the fresh notice or any subsequent notice is returned unserved, the same procedure shall be repeated.

60-A. The Bench Clerks of the High Court shall have power to determine whether notice of appeal or other process has been duly served and to direct the issue of fresh notice of an appeal or petition or other process. Provided that if any party or pleader is dissatisfied with the finding of the Bench Clerk, the matter shall at the request of such party or pleader be posted for the orders of the Registrar.

61. The following fees shall be chargeable for serving and executing processes issued by the High Court of Madras in its Appellate Jurisdiction:—

SCHEDULE.

Nature of Process.	Amount leviable.
Rs. A. P.	
For each summons or notice—	
(a) to a single respondent or witness . . .	1 0 0
(b) to every additional respondent or witness residing in the same village, if the pro- cesses be applied for at the same time . . .	0 8 0
(c) for each injunction order and every pro- cess not expressly provided for . . .	2 0 0
(d) for urgent process the fee will be the ordinary fee and half as much again.	

NOTE.—In cases where notice is served on a pleader on behalf of several respondents under Rule 62-A, there shall

be a single service and single fee. There shall similarly be a single service and single fee in the case of notice to a guardian representing several minors.

62. Whenever in an appeal from the mufussal a respondent who is to be served with notice resides within the local limits of the original jurisdiction of the High Court, service of notice shall be effected through the Sheriff of Madras, the fees payable in respect of such process being the same as those prescribed in R. 61.

62-A. In any appeal, petition, case referred or other matter filed in the High Court before the disposal of the main proceedings in the Lower Court, notice shall be served on the pleader who represents the party in the main proceedings in the Lower Court and such service shall be deemed to be sufficient service on the party who is represented by such pleader. In cases, however, where the parties are not represented by a pleader in the main proceedings, the notice shall be served on the party direct.

63. The fees for the service of notices on respondents shall be paid in the form of court-fee labels, and the court-fee labels shall be attached to a memorandum in Form No. 1 of Appendix IV.

64. When an appellant or his pleader has failed to pay into the Registrar's Office within the prescribed periods the fees required for the service of notices on the respondent, the appeal or appeals shall be posted for the orders of the Court.

CHAPTER VIII.

SEARCHES OF RECORDS.

65. Every person requiring a search to be made of the records of the Court for the purpose either of inspection or of obtaining copies of records, shall submit an application for the same in the subjoined form or to the like effect:—

FORM OF APPLICATION FOR SEARCH OF PUBLIC RECORDS.

To

THE REGISTRAR, HIGH COURT, MADRAS.

Name and address of applicant, in full.	Description of record as far as possible.	Purpose for which inspection or copy is required.
---	---	---

Date.

Signature of Applicant.

Explanation.—Inspection in this rule does not include the examination of records for the purpose of preparing or amending lists of papers under the provisions of Chapter IX of these rules.

66. A separate application need not be presented in respect of each document for which a search is required. Enclosures or annexures to letters, accounts or other documents form part of the documents to which they appertain and are not reckoned for the purposes of these rules as separate documents.

67. When leave has been granted, the pleader on the record, or his authorised assistant or the party in person may search the record in the presence of the Record-keeper or his assistant.

68. The fee for a search shall be two rupees for every hour or part of an hour during which the Record-keeper shall be engaged, and shall be paid by court-fee stamps affixed to the application.

69. The payment of the fees for a search will entitle the applicant to read the document or part of the document for the finding of which the fee has been paid, or to have it read to him, or to make a short memorandum of the date and nature of the document so as to enable him to describe it sufficiently in case a copy is required, but it shall not entitle him to take a copy of the document or part of the document or to make extracts therefrom.

70. The granting of copies of documents is regulated by the rules of the High Court relating to copies.

71. Nothing in these rules shall entitle any person to inspect or obtain copies of the registers of the Court without special leave of the Court, or to see Judges' notes or autograph judgments.

CHAPTER IX.

APPEALS FORM ORIGINAL DECREES OF SUBORDINATE COURTS.

72. The record shall be in English and shall be printed on substantial white foolscap folio paper with an outer margin about two inches wide and an inner margin about one inch wide and separate sheets shall be stitched together book-wise. The pages shall be consecutively numbered, and the printing shall be on both sides of the paper and numbers shall be expressed in figures. Every tenth line on each page shall be numbered.

73. The record shall consist of the following papers:—

(1) A table of contents with reference to the pages of the record;

(2) A chronological index of all documents filed in the case;

(3) The plaint, written statement and issues, with the Judge's notes if any;

(4) The judgment and decree and any schedules thereto;

(5) The grounds of appeal and memorandum of objections if any;

(6) Any order calling for a finding or report, any finding or report, and the objections thereto;

(7) The B Diary;

(8) Such other papers as the parties desire to have translated and printed and have within the prescribed period applied to be included in the record:

Provided that schedules to the plaint or decree shall not be translated or printed, unless they are

necessary for the decision of the appeal and are specified in the lists hereinafter mentioned.

74. (1) The appellant, at the time of filing his memorandum of appeal, and the respondent within one month after service on him of the notice of appeal, shall file in Court lists, in Form No. 2 of Appendix IV, of the papers mentioned in rule 73 which they desire to have translated and printed. If the respondent has filed a memorandum of objections, it should be included in his list.

(2) The lists above referred to shall contain a full description of the papers required to be translated and printed. No papers other than exhibits and depositions will be called for from the lower court unless specially mentioned in the list.

75. (1) The appellant shall pay into Court along with his memorandum of appeal the sum of Rs. 10 as the cost of preparing the portions of the record numbered 4 and 5 in rule 73.

(2) In the case of several connected appeals or batches of appeals a single deposit to cover the cost of preparing the record in the leading case may be accepted in the discretion of the Registrar.

(3) No portion of the said sum shall be returned to the party, but if the cost of preparing the said portions of the record exceeds the said sum, the party shall pay the excess together with the sum mentioned in rule 79. Provided that if no portion of the record has been prepared, the Registrar may direct that the said sum shall be repaid to the party.

76. Any party shall be entitled to inspect in the Registrar's Office the list of any other party in the case, and, at his own expense, to obtain a copy of the whole or of any portion thereof under the rules of the High Court relating to copies.

77. (1) A list of cases in which portions of documents are required to be translated and printed

shall be posted on the notice board from time to time.

(2) The parties concerned shall, within seven days of the date of the said notice, point out the required portions. In default, these documents will be excluded from the record.

78. The Registrar shall cause to be prepared and entered in the said lists filed by the parties an estimate of the sums payable by such parties for preparing the record framed in accordance with the prescribed schedule of rates and shall give credit therein for the amount paid by the appellant in accordance with clause (1) of rule 75.

79. (1) The Registrar shall give to the parties notice of the amounts of the estimate mentioned in rule 78 by affixing a statement thereof to the Court notice board, and thereupon the party shall be at liberty within 25 days from the date of such notice to deposit the requisite sum in Court.

(2) The preparation of the record and the hearing of the appeal shall not be delayed by reason of the failure of a party to deposit a sufficient sum in Court within the prescribed period: provided that he may apply for further time in manner prescribed by sub-rule (2) of rule 3 of Order XLI-A of the Code of Civil Procedure, and shall thereupon produce a certificate showing the dates on which the acts prescribed by the rules were done or should have been done, which will be granted by the Deputy Registrar upon payment of a fee of Rs. 2 to be paid in Court-fee stamps, and provides also that the Registrar may, whenever he thinks fit, dispense with the formal application subject to the condition that the fees payable are the same as in the case of a formal application.

(3) A party shall be entitled to one copy of the portion of the record, for the preparation of which he has paid, free of charge, and to the further copies thereof mentioned in the list filed by him and any

available copies of other portions of the record prepared under these rules, upon payment of a charge to be fixed by the Registrar in accordance with the prescribed schedule of rates. Provided that in cases to which the Government is a party, the Law Officers of Government shall be supplied with printed records free of charge, but the charges incurred therefor shall be entered in the account maintained for the purpose.

(4) The respondent shall apply in writing within one month after service on him of the notice of appeal, if he requires a set of printed records.

MEMORANDUM OF OBJECTIONS.

79-A. [*Omitted.*]

79-B. Any party who has received or been served with a memorandum of objections may, within two weeks from the date of acknowledgment or of service, file a further list of documents.

79-C. When an appeal is dismissed under rule 10 of Order XLI-A, Civil Procedure Code, any respondent who has filed a memorandum of cross-objection may, if the Court so directs, be permitted to deposit within a time specified, funds sufficient for the further preparation of so much of the record as is necessary for the hearing of the memorandum of cross-objection.

80. When the record has been prepared and printed so far as the sum deposited within the prescribed period permitted, the appeal shall be posted on the notice board of the Court as ready for hearing. Provided that, unless otherwise ordered, no case shall be so posted until after the expiration of eight weeks from the date of service of the notice of appeal upon the respondent.

81, 82, 83. [Renumbered as 40A, 40B and 40C.]

84. Pleaders shall be responsible to the Registrar for all translation and printing charges incurred by him

on their behalf under these rules. The Registrar shall have power to stop at his discretion the issue of all or any papers to any pleader who has failed to pay any money due by him to the Court under these rules.

85. When application is made for the translation and printing of any document not on the record with a view to its admission in evidence, the translation and printing may be ordered by the Registrar, provided that the order shall be made without prejudice to the posting of the case.

86. The charges for translation and printing, including those incurred under rules 78 and 79, will, as a rule, be costs in the cause. But if it appears to the Court that the translation or printing of any paper or part of a paper was not necessary to the proper determination of the cause, the party at whose instance the printing or translation was executed may be ordered to bear the costs thereof.

87. When a record not required to be printed under these rules is in a vernacular language and has been translated into English for the convenience of the Court, any party to the case who desires to have a copy of such translation for the purpose of the hearing of the case or of any interlocutory application in connection therewith, shall apply therefor in writing to the Deputy Registrar, Appellate Side.

88. It shall be within the discretion of the Deputy Registrar to grant or refuse all such applications on the understanding that the Court has objection to the grant of such copies unless it appears that they have been applied for with some ulterior object, *e.g.*, to cause delay. It must also be distinctly understood that such translations are only rough translations made for the convenience of the Court, that their absolute correctness is not vouched for, and that copies granted under this rule are intended only to be used at the hearing of the particular appeal concerned. To prevent any improper use of such translations all copies

granted under this rule shall be clearly marked as follows:—

Uncertified copy of the translation of Exhibit in Appeal|Petition No. of 19 on the file of the High Court. The translation of this document was prepared in the High Court for the purpose of Appeal|Petition No. of and the copy was granted to Mr. Counsel|Advocate for solely for use at the hearing of the said Appeal|Petition and must not be made use of for any other purpose.

89. Whenever (with) the permission of the Court a paper which has not been previously translated as provided above is translated orally in open Court, the party at whose instance the translation is made shall be charged a special fee of Rs. 2 per page or fraction of a page.

90. (1) The following rates shall be charged for the preparation of the record:—

	Rs.	A.	P.
Translation, per page of 24 lines	1	4	0
Printing, per page	1	0	0
Papers printed for the opposite party, per printed page	0	8	0
Spare copies, if applied for at the time of presenting the original list (Rr. 74 and 75), per printed page	0	1	0
Spare copies, if not applied for at the time of presenting such list	0	2	0
Copies of translations granted under R. 88, per page of 24 lines	0	2	0

(2) Special charges according to actual cost shall be made when papers have to be printed in a tabular form of special type or other special manner.

(3) Any balance that may remain after translation and printing have been completed in a case shall be refunded to the depositor.

NOTE.—In calculating the translation and printing fees, the amounts should be taken to the nearest anna, i.e., six pies and over should be considered as one anna and amounts less than six pies should be omitted.

90-A. These rules shall apply to appeals transferred to the High Court from other Courts.

90-B. (1) Notwithstanding anything in the foregoing rules, in every appeal to the High Court from Original decrees of Subordinate Courts, where the value of the subject-matter in dispute is Rs. 10,000 or upwards within the meaning of Sec. 110 of the Code of Civil Procedure, and in all other cases where the appellant at the time of filing the appeal or the respondent at the time of filing his appearance applies for the record to be printed in the Privy Council Form and the other side agrees the record shall, unless the Court otherwise orders, be printed in the Privy Council Form..

(2) The preparation of the record and the arrangement of the papers shall as far as practicable be in conformity with the rules laid down in Chapter X, *infra*, and care shall be taken that the oral evidence begins at the commencement of a sheet and is printed in such a way that this portion of the record can easily be detached and bound together with the documents, so as to constitute a separate volume for the use of the High Court in hearing the appeal. Each exhibit shall be printed separately and paged at the foot of each page, so as to admit the papers being readily detached and re-arranged in accordance with the provisions of Rule 121, *infra*, in the event of an appeal to the Privy Council.

(3) In addition to the number of copies ordinarily struck off for use of the hearing of the appeal in the High Court, 55 additional copies shall be struck off and retained in the High Court, so as to be available for use in the event of an appeal to the Privy Council from the appellate decree of the High Court.

(4) The charges for the preparation of the record shall be divided between the parties in the same manner as they would be, if the record had been prepared in the ordinary form. The charges for translation shall

be at the rate prescribed in this chapter. In all other respects the rules embodied in this chapter and in Chapter X shall be followed in so far as they are applicable.

Appeals from Appellate Decrees.

91. A memorandum of appeal from an appellate decree shall be accompanied by the fees prescribed for notice and the sum of Rs. 7 as the cost of preparing the portion of the record numbered 3 in Rule 93.

92. A list of cases to be heard under Order XLI, Rule 11, read with Order XLI of the Code of Civil Procedure shall be affixed to the Court notice board and any such case may be posted for hearing not less than three clear days after it has been entered in the said list, and such entry shall be sufficient notice to the appellant of the day fixed for hearing the appeal. If notice to the respondent is ordered, intimation of that order shall be given to the appellant on the notice board of the Court.

93. The following papers shall be printed after translation where necessary, in the manner prescribed in the foregoing rules for appeals from original decrees [with the exception of Rule 73 and so much of Rule 75 (1) as relates to payment of deposit]:

- (1) Table of contents with reference to the pages of the record;
- (2) the plaint and written statement and issues, unless the appellant applies to omit the same;
- (3) decrees of the lower Courts;
- (4) a judgment or order of remand of the lower appellate Court or High Court, and any finding on report;
- (5) the Memorandum of Appeal to the Lower Appellate Court as well as to the High Court;
- (6) the B Diary in the lower Court; and

- (7) Such other papers as the parties have, within the prescribed period, applied to be included in the record and paid for.

94. Any party may apply to the Registrar for any of the said papers other than those numbered (3) and (5) in Rule 93, to be omitted from the printed papers. The Registrar shall have full discretion to disallow the printing of papers which he considers unnecessary for the disposal of the case. If the practitioner considers that any paper not printed is necessary for the disposal of his case, he may provide at the time of hearing, after serving copies on the other side, typed copies of such evidence or documents for the use of the Court, provided that, if the evidence or documents are in the vernacular, they should be translated in the High Court. If the unsuccessful party claims that any portion of the printing done at the instance of the other party was unnecessary, he may file a petition representing his claim which shall be considered and disposed of by the Registrar or Taxing Officer on the merits.

95. When an appeal against an appellate decree or order has been heard and disposed of by a single Judge, any application for a certificate that the case is a fit one for further appeal to the High Court under clause 15 of the Letters Patent of the High Court shall be made orally and immediately after the judgment has been delivered.

96 and 97. [Renumbered as 79-A and 79-B.]

Appeals from Interlocutory Orders.

98. In all cases where the records have not been called for, the appellant shall, within twenty-one days from the date of notice of the admission of the appeal, file in Court certified copies of all the papers (other than those filed with the memorandum of appeal) on which he intends to rely at the hearing and which he desires to have translated and printed. The respondent shall, within twenty-one days from the date of

service of notice on him, file in Court certified copies of all the papers (other than those filed by the appellant) on which he intends to rely at the hearing and which he desires to have translated and printed.

99. If the appeal is entered in the list of cases to be heard under Order XLI, Rule 11, Civil Procedure Code, the appellant shall within three days after such entry file a printed or typed copy of the memorandum of appeal and of the documents accompanying the same.

100. The appellant shall at the time of filing his memorandum of appeal pay into Court the sum of Rs. 7 as the cost of preparing the portion of the record numbered (i), (ii) and (iii) in Rule 101.

101. The record prepared for the hearing of the appeal shall consist of the following papers:—

- (i) The memorandum of appeal;
- (ii) The order appealed against;
- (iii) The judgment;
- (iv) The application or proceeding on which the order appealed against was made;
- (v) The petition, if any, filed in answer;
- (vi) Where the appeal relates to an order in execution of a decree, the decree and the B. Diary;
- (vii) Such other papers as the parties have within the prescribed period applied to be included in the record.

102. The rules relating to the preparation of appeals from original decrees shall so far as may be apply to the preparation of records in appeals from interlocutory orders, 'fourteen' days being substituted for 'twenty-five' days in Rule 79.

If the respondent files a memorandum of objections the appellant or other respondent affected thereby shall within one week of the acknowledgment of service file in Court certified copies of further papers on

which he intends to rely at the hearing and which he desires to have translated and printed.

103 and 104.★ [Renumbered as 90-A and 90-B.]

Miscellaneous cases.

105. In all civil revision petitions the records shall after admission be printed unless the Court otherwise orders.

105-A. The rules relating to the translation and printing of papers in appeals from original decrees (except R. 73) shall apply to the translation and printing of papers in all miscellaneous cases other than appeals and second appeals from decrees, with the following modification, *viz.* :—

Rupees five shall be substituted for Rs. 10 in Rule 75 (1) and fourteen days for twenty-five days in Rule 79.

105-B. Rules 98 and 99 of these rules and the proviso to R. 2 of O. XLIII of the First Schedule to the Code of Civil Procedure, 1908, shall, as far as may be, apply to Civil Revision Petitions in respect of interlocutory order prior to decree.

106. (1) The following papers shall always form part of the printed papers and shall be prepared and printed at the cost of the appellant :—

Table of contents with reference to pages ;

The application or proceedings on which the order appealed against was made ;

The petition, if any, filed in answer ;

The decree or order appealed against ;

The judgment ;

The B Diary ;

The memorandum of appeal or petition :

Provided that in the case of all appeals and second appeals and revision petitions against orders passed in

execution, the decree which is in execution shall also form part of the printed papers, and shall be prepared and printed at the cost of the appellant.

(2) The appeal or petition shall be liable to be dismissed for default of prosecution if any of the papers mentioned in this rule have not been printed owing to the appellant's or petitioner's failure to make the necessary deposit therefor.

CHAPTER IX-A.

FEES CHARGEABLE FOR TRANSMISSION OF RECORDS FROM THE LOWER COURTS TO THE HIGH COURT.

In all civil cases where records have to be transmitted to the High Court from the Lower Courts, either by rail or by post, the following fees shall be levied according to the nature of the case in which records are called for. These fees may be included in the costs of the appeal or petition:—

	Rs.	A.	P.
First Appeals	1	0	0
Second Appeals	0	8	0
Miscellaneous cases	0	4	0

The fee will be payable in court-fee stamps and, unless it is paid within three days from the date on which notice of admission of the appeal, second appeal, or miscellaneous cases is posted on the notice board, the records will not be called for.

CHAPTER X.

APPEALS TO THE PRIVY COUNCIL.

107. Every petition for leave to appeal to His Majesty in Council shall be accompanied by an acknowledgment signed by the pleader, if any, who has appeared for the opposite party at the hearing of the appeal in the High Court stating that he has received

a copy of the petition; and such acknowledgment shall be deemed to be sufficient service on the party who has appeared by such pleader.

In cases where a party respondent has not appeared by pleader at the hearing of the appeal in the High Court the petition for leave to appeal shall be accompanied in each case by the fees prescribed for service of notice and by a copy of the petition for service on such party.

108. The security to be furnished under O. XLV, R. 7 (1) (a) of the Code of Civil Procedure shall, unless otherwise ordered, be in the sum of Rs. 4,000 in cash or in Government securities of the approximate market value in the sum of Rs. 4,000. Where Government securities are deposited, interest on the same may be disbursed to the depositor as it falls due or allowed to accumulate at his option.

109. When a party to an appeal to His Majesty in Council, or his legal representative, wishes to draw the interest accruing on Government promissory notes deposited by such party as security under O. XLV, R. 7 of the Code of Civil Procedure, he or his pleader duly authorised on this behalf shall apply by a letter bearing the counter-signature of the pleader or pleaders for the other contesting parties for the disbursement of such interest and the Registrar may order the disbursement after verification. Such applications shall be made only when at least six months' interest has accrued. Should the pleader for any of the other parties appearing refuse to countersign the letter of application, the party wishing to draw the interest shall apply by a petition and the Registrar shall pass orders on that petition. When a party or his legal representative wishes to obtain a refund of the unexpended balance of the amount deposited by him for the preparation and transmission of the record to the Privy Council under Order XLV, Rule 12, he or his pleader duly authorised in this behalf shall apply by petition for the refund and the Registrar may pay the peti-

tioner the moneys which may be ascertained to be due to him as aforesaid.

110. When an appeal to the Privy Council has been disposed of and the order therein does not direct any costs to be paid by the appellant, the person or persons entitled to the return of the security, or the discharge of any surety who has given security for costs under O. XLV, R. 7 of the Code of Civil Procedure may apply in person or by pleader duly authorised in this behalf by petition supported by affidavit, if necessary, and accompanied by a certified copy of the order of His Majesty in Council, for the return of such security or the discharge of such surety; and thereupon the Registrar may return or cancel the security, or discharge the surety:

Provided that in cases of doubt the Registrar shall post the petition for orders before a Bench of two Judges.

111. (1) Where in any case under the proviso to sub-rule (1) of R. 7 of O. XLV of the Code of Civil Procedure, the High Court for special reasons permits immovable property to be offered as security, the appellant shall file a duly registered mortgage bond together with a specification of the surety's title.

(2) When the bond has been filed, the Court shall direct the security to be tested either by the Registrar, or, unless the Court otherwise orders, by the Judge of the District Court in which the immovable property pledged is situated. If the security be found insufficient, the appellant shall within three weeks deposit cash or Government securities as prescribed by Rule 108, *supra*, or deposit such lesser amount in cash or Government securities as would with the immovable property offered as security raise the value of such security to the prescribed amount.

(3) In any special case, the Court may, if it thinks fit, on the application of the respondent, require secu-

urity to a larger amount, in no case, however, exceeding Rs. 10,000.

112. The Court may, at any time before the admission of the appeal, upon cause shown, revoke the acceptance of any security, and make further directions thereon.

113. (1) A sum of Rs. 200 (to be afterwards increased, if necessary) shall be deposited to meet the expenses of preparing or completing and transmitting the record.

(2) The appellant when he makes the deposit referred to above shall file a list of the papers (other than the memorandum of appeal and cross-objections, if any, to the High Court, the decree and judgment or order of the High Court) which he desires to have included in Part I of the record more particularly specified in Rule 121, *infra*.

The list filed by the appellant shall be accompanied by an acknowledgment in writing signed by the respondent's pleader, if any, stating that he has received a copy of that list and the respondent shall be at liberty to add to appellant's list by filing in Court within seven days of the receipt of the appellant's list a supplemental list of the additional papers, if any, he desires to be included in Part I of the record.

114. When the security has been given and the expense of preparing the record deposited, the Registrar shall grant a certificate in the form hereinafter annexed.

115. As soon as practicable after the certificate referred to above has been granted the case shall be posted before the Court for orders as to admission under O. XLV, R. 8 of the Code of Civil Procedure, and, on the admission of the appeal, an order in the form hereinafter annexed shall be drawn up and notice thereof given to the respondent and, if he appears by pleader, notice to such pleader shall be deemed to be sufficient notice to the respondent.

116. If, at any time after the admission of the appeal but before the transmission of the record to the Registrar of the Privy Council, it is shown to the satisfaction of the Court that the security given by the appellant is insufficient, or it appears to the Court that a further payment is required for the purpose of the preparation of the record, the Court may call upon the appellant to furnish other and sufficient security, or to make the required payment within a time to be limited, and if the appellant fails to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order of the Judicial Committee, and in the meantime execution of the decree of the High Court shall not be stayed.

117. If, at any time, it appears that the deposit already made by the appellant to defray the cost of preparing the record, etc., is not sufficient, the appellant may be required to deposit within a fixed time such further amount as may appear to be necessary upon a rough estimate of the probable cost of the preparation and transmission of the entire record, and the preparation of the record may be stayed until the required amount has been paid. The calling for such further deposit shall be deemed to be a *quasi-judicial* act under Sec. 128 (2) (i) of the Code of Civil Procedure and may be performed by the Registrar.

118. Upon the Registrar being satisfied that the notice required by O. XLV, R. 8 (b) of the Code of Civil Procedure and referred to in Rule 115, *supra*, has been duly served, the record may be completed and transmitted to the Registrar of the Privy Council.

119. (1) Any supplemental record dealing with the addition of a party, or the substitution of the heir of a deceased party, or with the retirement, removal or death of the next friend or guardian *ad litem* of a minor party, shall be transmitted to the Registrar of the Privy Council in manuscript instead of being printed.

(2) The record (or supplementary record) shall include a copy of the notice issued to the respondent (or to any person brought on record as respondent) after the admission of the appeal under O. XLV, R. 8 of the Code of Civil Procedure and the return thereto together with a certificate by the Registrar that the notice has been duly served.

(3) When special leave to appeal has been granted by His Majesty in Council and intimation thereof is received in the High Court, notice of the grant of such special leave shall be given to the respondent, or to his pleader, if any, and a copy of this notice and the return thereto, together with a certificate by the Registrar that such notice has been duly served, shall form part of the record.

(4) Where the name of the person has been brought on the record of the appeal as respondent by an order of His Majesty in Council, and intimation thereof is received in the High Court, notice of the fact shall be given to the said respondent through his pleader, if any, and a copy of the notice and the return thereto, together with a certificate by the Registrar that such notice has been duly served, shall form part of the record or supplementary record, if any, or shall be separately transmitted to His Majesty in Council.

(5) When the record or supplementary record in an appeal to His Majesty in Council has been despatched to the Registrar of the Privy Council, notice of the despatch shall be given to the parties through their pleaders, if any, and by affixing a copy of the notice on the notice board of the Court; and a copy of this notice and a certificate by the Registrar showing the fact and manner of service shall be transmitted to the Privy Council.

(6) When the record or supplementary record has been received by the Registrar of the Privy Council notice of such receipt shall be given to the parties through their pleaders, if any, and by affixing a copy of the notice on the notice board of the Court as soon

as the Registrar of the Privy Council has acknowledged the receipt of the record by him. A copy of this notice and a certificate by the Registrar showing the fact and manner of service shall be transmitted to the Privy Council.

(7) The charge for serving the notices referred to in this rule shall be borne by the appellant, and provisions of Chapter VII of the rules shall apply.

120. (1) When the security and deposit required by O. XLV, R. 7 of the Code of Civil Procedure have been furnished, the officer entrusted with the preparation of the record to be transmitted to the Privy Council shall forthwith commence its preparation.

(2) The Registrar, as well as the parties and their pleaders, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the appeal and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents such as stamp and registration endorsements, schedules of property, etc. (unless they are relevant) and as regards oral evidence certificates of due compliance with the provisions of Rules 5 and 6 of O. XVIII of the Code of Civil Procedure.

(3) A long series of documents such as accounts, rent-rolls, inventories, etc., shall not be printed in full unless the parties satisfy the Registrar that their printing at length is necessary. Short extracts from such documents may be printed as specimens.

(4) In appeals in which the questions to be decided are entirely questions of law and not of fact (*e.g.*, appeals from decisions on second appeals) the record shall be confined, as far as possible, to the legal points under appeal, and shall not contain evidence of facts not to be brought under the consideration of their Lordships.

(5) Notice shall be given by the officer preparing the records to the parties, through their pleaders, calling upon them to state within a specified time the papers which may be omitted as unnecessary or irrelevant. The description of the papers omitted may, if so desired, appear both in the index and in the record with the words "not printed" against each or where a larger number of papers is omitted a list of them may be inserted at the end of the part to which they belong.

(6) Where in the course of the preparation of record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the record as finally printed shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

121. (1) The record shall be printed in the form known as demi-quarto.

(2) The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and $8\frac{1}{2}$ inches in width.

(3) The type to be used in the text shall be pica type but long primer shall be used in printing accounts, tabular matter and notes. The number of lines in each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

(4) Records shall be arranged into two parts in the same volume, where practicable, *viz.*:

Part I.—The pleadings and proceedings, the transcript of the evidence of witnesses, the judgments, decrees, etc., of the Courts below, down to the order admitting the appeal.

Part II.—The exhibits and documents.

(5) The index to Part I shall be in chronological order, and shall be placed at the beginning of the volume.

The index to Part II shall follow the order of the exhibit mark and shall be placed immediately after the index to Part I.

(6) Part I shall be arranged strictly in chronological order, *i.e.*, in the same order as the index.

Part II shall be arranged in the most convenient way for the use of the Judicial Committee, as the circumstances of the cases require. The documents shall be printed as far as suitable in chronological order, mixing plaintiff's and defendant's documents together when necessary. Each document shall show its exhibit mark, and whether it is a plaintiff's or defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter, such as—

(a) a series of correspondence, or

(b) proceedings in a suit other than the one under appeal shall be kept together. The order in the record of documents in Part II will probably be different from the order of the index and the proper page number of each document shall be inserted in the printed index.

The parties will be responsible for arranging the record in proper order for the Judicial Committee, and in difficult cases Counsel may be asked to settle it.

(7) The documents in Part I shall be numbered consecutively.

The documents in Part II shall not be numbered, apart from the exhibit mark.

(8) Each document shall have a heading which shall consist of the number or exhibit and the description of the document in the index without the date.

(9) Each document shall have a marginal note which shall be repeated on each page over which the document extends, *viz.* :

PART I.

(a) Where the case has been before more than one Court, the short name of the Court shall first appear. Where the case has been before only one Court, the name of the Court need not appear.

(b) The marginal note of the document shall then appear, consisting of the number and the description of the document in the index with the date except in the case of oral evidence.

(c) In the case of oral evidence 'plaintiff's evidence' or 'defendant's evidence' shall appear beneath the name of the Court and then the marginal note consisting of the number in the index and the witness's name, with 'examination', 'cross-examination' or 're-examination', as the case may be.

PART II.

The word 'Exhibits' shall first appear.

The marginal note of the exhibit shall then appear, consisting of the exhibit mark and the description of the document in the index, with the date.

(10) The officer of the Court entrusted with the supervision of the preparation of the record shall, without unnecessary delay, call upon the pleaders of the parties, or the parties if they are unrepresented by pleaders, to prepare a list of exhibits and documents to be included in Part II arranging them in the order in which they are to be bound together or printed, as the case may be, within a specified period, the length of which may vary according to the number and nature of the documents. If any party makes default, the list furnished by any other party may be accepted and, where all parties make default, the case may be posted for orders why the leave granted under Order

XLV, Rule 8 of the Code of Civil Procedure should not be rescinded.

(11) If the parties are not agreed as to the order in which documents should be arranged in Part II and do not accept the suggestion, if any, made by the officer supervising the preparation of the record, the matter shall be reported to the Court for orders.

122. Documents translated for the High Court shall not be translated again in preparing the record under this chapter except by leave of the High Court.

123. Whenever it is desired to include in Part I or Part II of the record any document or exhibit not included in the record as prepared under Rule 90-B, *supra*, the party so desiring may, after previous notice to the opposite party, apply by petition supported by affidavit within seven days of the deposit referred to in Rule 113, *supra*.

124. When leave to appeal to His Majesty in Council is granted and no portion of the record has been printed under Rule 90-B, *supra*, the appellant, if he elects to have the record printed in India, shall in the first instance deposit a sum of Rs. 500 to meet the expenses of translation, if any, printing and transmitting the record. The printing shall be commenced as soon as practicable after the deposit has been made.

Where appellant elects to have the record printed in England the papers shall, on completion of the translation, if any, be fair-copied under the supervision of the proper officer of the Court.

125. The charge for the preparation of the record shall be calculated at the rates mentioned in the schedule annexed hereto; but the said rates are subject to modification according to the arrangement made from time to time by the Registrar with the High Court printers.

126. Where the record is printed in India, 40 copies shall be despatched to the Registrar of the Privy

Council and 12 copies shall be divided between the parties on each side. The entire cost of preparing or completing the record, as the case may be, shall in all cases be paid by the appellant and the Registrar shall certify the fees and expenses incurred and paid for the preparation and transmission of the record.

127. Where a party who has been successful in an appeal to His Majesty in Council applies for a certificate of the costs incurred in the appeal in the High Court, the Registrar shall, upon production of the order of His Majesty in Council for the payment of such costs and without reference to the Court, prepare a certificate of the fees and expenses incurred and paid for the preparation and transmission of the record and place it on the record of the Privy Council Appeal.

Such certificate may also include pleader's fee incurred in the High Court in connection with the application for leave and proceedings subsequent thereto and the Registrar may assess the amount therefor at a sum not exceeding Rs. 250 having due regard to the circumstances of the case.

RULE 114.

Certified that appellant has given security for the costs of the respondent, etc. (Rule 114).

I hereby certify that _____ has this day deposited in the Office of the Registrar of the High Court the sum of Rs. _____ as security for the costs of the respondent in the appeal sought to be preferred to His Majesty in Council against the decree of the High Court in Suit No. _____ of _____ and has deposited the sum of Rs. _____ to defray the expenses of translating, transcribing, indexing, printing and transmitting to His Majesty in Council a correct copy of the material portion of the record of the said suit.

RULE 115.

Form of order admitting Appeal to His Majesty in Council. (Rule 115).

Civil Miscellaneous Petition No. of 19 .

Application praying *inter alia*, that the High Court will, on the fulfilment of the necessary conditions, be pleased to make the further order required by O. XLV, R. 8 of the Code of Civil Procedure in the appeal sought to be preferred by the petitioner to the Privy Council against the decree of the High Court in Appeal No. of 19 , dated 19 .

ORDER.

This application coming on for orders: upon perusing the application and upon hearing the arguments of for the petitioner, and it appearing from the certificate of the Registrar of this Court, dated 19 , that the petitioner fulfilled the requirement of O. XLV, R. 7, in regard to giving security for the costs of the respondent and making the deposit of the amount required to defray the expenses of preparing a copy of the record for transmission to the Privy Council; this Court doth hereby declare that the appeal of the petitioner to the Privy Council against the decree of this Court in Appeal No. of 19 is admitted; and this Court doth further order that notice thereof be sent to the respondent, and that a correct copy of the material portions of the record of the said appeal be transmitted to the Privy Council under the seal of the Court.

RULE 125.

Schedule of Rates. (Rule 125).

	Rs.	A.	P.
Copying per five pages	1	0	0
Examining and reading, per manuscript page	0	2	0
Preparation of record for the press and the examination of proofs—For every printed page	0	8	0

Indexing for every 240 words	1	0	0
Checking press bill for every ten pages	1	8	0
Paper:	1	8	0

Actual charge on the quantity consumed at the rate, including commission, fixed from time to time by the Superintendent of Stationery, or at the market rate when purchased locally.

Printing:

Pica demy 4to. plain	1	7	0
Pica half tabular	2	3	0
Pica full tabular	2	14	0
Small pica 4to plain	2	2	0
Small pica half tabular	3	3	0
Small pica full tabular	4	4	0

N.B.—These rates include the charges for marginal notes as also printing one or more lines on the dockets in coloured ink other than black.

Pedigree work to be charged from one-half more than plain matter to double according to the quantity of matter contained.

(*Fort St. George Gazette*, Part II, dated 9th April 1935, page 478.)

Certificate of leave to appeal to His Majesty in Council.

O. XLV, R. 7, Code of Civil Procedure.

(In cases where the subject-matter of the appeal is of sufficient value and the finding of the Courts are not concurrent.)

Read petition presented under O. XLV, R. 3 of the Code of Civil Procedure praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the decree|final order of this Court in Suit No. of 19 .

The petition coming on for hearing, upon perusing the petition and the grounds of appeal to His Majesty in Council and the other papers material to the application and upon hearing the arguments of for the petitioner and of for the respondent:

(if he appears), this Court doth certify that the amount-value of the subject-matter of the suit in the Court of first instance is Rs. 10,000|upwards of Rs. 10,000 and the amount|value of the subject-matter in dispute on appeal to His Majesty in Council is also of the value of Rs. 10,000|upwards of Rs. 10,000 or that the Council decree|final order appealed from involves directly|indirectly some claim or question to|respecting property of the value of Rs. 10,000|upwards of Rs. 10,000 and that the decree|final order appealed from does not affirm the decision of the lower court.

Certificate of leave to appeal to His Majesty in Council.

O. XLV, R. 1, Code of Civil Procedure.

(In cases where the subject-matter is of sufficient value and the findings of the Court are concurrent.)

Read petition presented under O. XLV, R. 3 of the Code of Civil Procedure praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the decree|final order of this Court in Suit No. of 19 .

The petition coming on for hearing, upon perusing the petition and the grounds of appeal to His Majesty in Council and other papers material to the application and upon hearing the arguments of for the petitioner and of for the respondent (if he appears), this Court doth certify that the amount|value of the subject-matter of the suit in the Court of first instance is Rs. 10,000|upwards of Rs. 10,000 and the amount|value of the subject-matter in dispute on appeal to His Majesty in Council is also of the value of Rs. 10,000| upwards of Rs. 10,000 or that the decree|final order appealed against involves directly|indirectly some claim or question to|respecting property of the value of Rs. 10,000|upwards of

Rs. 10,000 and that the affirming decree|final order appealed from involves the following substantial question(s) of law, *viz.* :—

(1)

(2)

Certificate of leave to appeal to His Majesty in Council.

O. XLV, R. 7, Code of Civil Procedure.

(In cases where the subject-matter in dispute is either not of sufficient value or in incapable of money valuation.)

Read petition presented under O. XLV, R. 3 of the Code of Civil Procedure praying for the grant of a certificate to enable the petitioner to appeal to His Majesty in Council against the decree|final order of this Court in Siut No. of 19 .

The petition coming on for hearing, upon perusing the petition and the grounds of appeal to His Majesty in Council and other papers material to the application and upon hearing the arguments of for the petitioner and of for the respondent (if he appears), this Court doth certify that the amount|value of the subject-matter of the suit both in the Court of first instance and in this Court is incapable of money valuation| below Rs. 10,000 in value this Court in the exercise of the discretion vested in it is satisfied that the case is a fit one for appeal to His Majesty in Council for the reasons set forth below, *viz.* :—

(1)

(2)

APPENDIX TO CHAPTER X.

THE NEW JUDICIAL COMMITTEE RULES.

The King's Most Excellent Majesty in Council.

Whereas by an Act passed in the 4th year of the reign of His Majesty King William IV, entitled "An

Act for the Better Administration of Justice in His Majesty's Privy Council", it is, amongst other things, enacted that it shall be lawful for His Majesty in Council from time to time to make any such Rules and Orders as may be thought fit for regulating the mode, form and time of appeal to be made from the decision of any Courts of Judicature in India (from the decisions of which an Appeal lies to His Majesty in Council) and in like manner from time to time to make such other Regulations for the preventing delays in the making or hearing such Appeals and as to the expenses attending the said Appeals and as to the amount or value of property in respect of which any such Appeal may be made.

And whereas Her Majesty Queen Victoria did by Her Order in Council of the 10th day of April, 1838, approve certain Rules and Orders for regulating the mode, form and time of Appeal from the decisions of the said Courts and also certain Regulations for the preventing delays in the making or hearing such Appeals and as to the expenses attending such appeals and as to the amount or value of property in respect of which any such Appeal may be made.

And whereas the King's Most Excellent Majesty in Council hath deemed it expedient to rescind all the said Rules, Orders and Regulations and to substitute others in lieu thereof:

His Majesty is, therefore, pleased, by and with the advice of His Privy Council, to rescind all the said Rules, Orders and Regulations in the said Order in Council of the 10th day of April, 1838, contained and to approve of the several Rules, Orders and Regulations contained in the Schedule hereto, and to order as it is hereby ordered, that the same be respectively observed by all Courts of Judicature in India and by all persons whom it shall or may concern.

Whereof the Governor-General of India in Council and all other persons whom it may concern, are to take notice and govern themselves accordingly.

The Schedule above referred to.

(1) Application to the Court for leave to appeal to His Majesty in Council shall be made within 90 days of the decree or order to be appealed from, subject to the provisions of Secs. 4, 5 and 12 of the Indian Limitation Act, 1908.

(2) The preparation of the Record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

(3) The Registrar, as well as the parties and their legal Agents, shall endeavour to exclude from the Record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the Appeal, and, generally, to reduce the bulk of the Record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a manuscript list to be transmitted with the Record.

(4) Where in the course of the preparation of a Record one party objects to inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, and the Court allows the document to be included, the Record, as printed (whether in India or in England), shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers, or otherwise, the fact, that, and the party by whom the inclusion of the document was objected to.

(5) Where the Record is printed in India, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council 40 copies of such Record, one of which copies he shall certify to be

correct by signing his name on, or initialling every eighth page thereof and by affixing thereto the seal, if any, of the Court.

(6) Where the Record is to be printed in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such Record, together with an index of all the papers and exhibits in the case. No other certified copies of the Record shall be transmitted to the Agents in England by or on behalf of the parties to the Appeal.

(7) Where there are two or more Appeals arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated.

(8) An appellant who has obtained a certificate for the admission of an Appeal may at any time prior to the making of an Order admitting the Appeal withdraw the Appeal on such terms as to costs and otherwise as the Court may direct.

(9) Where an appellant, having obtained a certificate for the admission of an Appeal, fails to furnish the security or make the deposit required (or apply with due diligence to the Court for an Order admitting the Appeal), the Court may, on its own motion or on an application in that behalf made by the respondent, cancel the certificate for the admission of the Appeal, and may give such directions as to the costs of the Appeal and the security entered into by the appellant as the Court shall think fit, or make such further or other Order in the premises as, in the opinion of the Court, the justice of the case requires.

(10) An appellant whose appeal has been admitted shall prosecute his appeal in accordance with the Rules for the time being regulating the general practice and procedure in appeals to His Majesty in Council.

(11) Where an appellant, whose appeal has been admitted, desires, prior to the despatch of the Record to England, to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of His Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

(12) Where an appellant, whose Appeal has been admitted, fails to show due diligence in taking all necessary steps in connection with the preparation of the Record, the Court may, either on its own motion or on the application of the respondent, call upon the appellant to show cause why a certificate should not be issued that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to issue such a certificate, the appeal shall be deemed as from the date of such certificate to stand dismissed for non-prosecution without express Order of His Majesty in Council and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

(13) Where at any time between the admission of an Appeal and the despatch of the Record to England the Record becomes defective by reason of the death, or change of status, of a party to the appeal, the Court may notwithstanding the admission of the appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted, or entered, on the Record, in place of, or in addition to, the party who has died, or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the Record as aforesaid without express Order of His Majesty in Council. If in the opinion of the Court there has

been undue delay in making this application, the Court may order the appellant or the party interested to take all necessary steps to perfect the Record within such time as the Court may direct, and, if he fails to comply with such Order the Court may call upon him to show cause why a certificate should not be issued that the appeal has not been effectually prosecuted, and if the Court sees fit to issue such a certificate, the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of His Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

(14) Where the Record subsequently to its despatch to England becomes defective by reason of the death, or change of status, of a party to the appeal, the Court may, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council, showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the Record, in place of, or in addition to, the party who has died, or undergone a change of status. If, in the opinion of the Court, there has been undue delay in making this application, the Court may order the appellant, or the party interested, to take all necessary steps to perfect the Record within such time as the Court may direct, and if he fails to comply with such Order, the Court shall report the matter to the Registrar of the Privy Council.

(15) These Rules shall come into operation on the 1st day of January, 1921, or on such other date as the Governor-General of India in Council may determine.

CHAPTER XI.

MISCELLANEOUS.

137. Application for enrolment under the Rules for the admission of Advocates and Vakils shall, unless the Chief Justice otherwise directs, be made before a bench of which the Chief Justice is a member.

138. When any act has not been done within the time lawfully appointed for that purpose by the Registrar and an application to the Court therefore becomes necessary, such application shall be made by petition. Any facts required to be proved in support of such petition shall be ordinarily proved by affidavit and such petition and affidavit (if any) shall be filed in the Registrar's Office before 4 o'clock in the afternoon of the day preceding that fixed for the sitting of the Court, before which the application is to be made.

139. The forms given in Appendix IV shall be used for the purposes therein mentioned.

140. The Office of the Registrar shall be open for the transaction of business from 11 A.M. to 4 P.M. on all days except Sundays and holidays. On Saturdays the office shall be closed for money transactions at 1 P.M.

ORDER XLI-A.

Appeals to the High Court from original decrees of Subordinate Courts.

1. The rules contained in Order XLI shall apply to appeals in the High Court of Judicature at Madras with the modification contained in this order.

2. (1) The memorandum of appeal shall be accompanied by the prescribed fees for service of notice of appeal and the receipt of the accountant of the Court for the sum prescribed by the rules of Court.

(2) Notwithstanding anything contained in Rule 22 of Order XLI, the period prescribed for entry of appearance by the respondent and filing by him of memorandum of cross-objections, if any, shall, unless otherwise ordered, be thirty days from the service of notice upon him.

3. (1) If the respondent intends to appear and defend the appeal he shall within the period specified in the notice of appeal enter an appearance by filing in Court a memorandum of appearance.

(2) If a respondent fails to enter an appearance within the time and in the manner provided by the sub-rule above, he shall not be allowed to translate or print any part of the record.

Provided that a respondent may apply by petition for further time, and the Court may thereupon make such order as it thinks fit. The application shall be supported by evidence to be given on affidavit as to the reason for the applicant's default, and notice thereof shall be given to the appellant and all parties who have entered an appearance. Unless otherwise ordered the applicant shall pay the costs of all parties appearing upon the application.

4. (1) The memorandum of appeal and the memorandum of appearance shall state an address for service within the City of Madras at which service of any notice, order or process may be made on the party filing such memorandum.

(2) If a party appears in person, the address for service may be within the local limits of the jurisdiction of the Court from whose decree the appeal is preferred:

Provided that if such party subsequently appears by a pleader he shall state in the vakalat an address for service within the City of Madras, and shall give notice thereof to each party who has appeared.

(3) If a party appears by a pleader, his address for service shall be that of his pleader, and all notices

to the party shall be served on his pleader at that address.

5. The Court may direct that service of a notice of appeal or other notice of process shall be made by sending the same in a registered cover prepaid for acknowledgment and addressed to the address for service of the party to be served which has been filed by him in the lower Court: Provided that, after a party has given notice of an address for service in accordance with Rule 4, service of any notice or process shall be made at such address.

6. All notices and processes, other than a notice of appeal, shall be sufficiently served if left by a party or his pleader, or by a person empowered by the pleader, or by an officer of the Court, between the hours of 11 A.M. and 5 P.M., at the address for service of the party to be served.

7. Notices which may be served by a party or his pleader under Rule 6, or which are sent from the office of the Registrar may, unless the Court otherwise directs, be sent by registered post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof and the posting thereof shall be a sufficient service.

8. If there are several respondents, and all do not appear by the same pleader, they shall give notice of appearance to such of the other respondents as appear separately.

9. A list of all cases in which notice is to be issued to the respondent shall be affixed to the Court notice-board after the case has been registered.

10. (1) If upon a case being called on for hearing by the Court, it appears that the record has not been translated and printed in accordance with the rules of Court, the Court may hear the appeal or dismiss it, or may adjourn the hearing and direct the

party in default to pay costs, or may make such order as it thinks fit.

(2) If the Court proceeds to hear the appeal, it may refuse to read or refer to any part of the record which is not included in the printed papers.

11. When costs are awarded, unless the Court otherwise orders, the costs of a party appearing upon any application before the Registrar or the Court shall be Rs. 15, and the costs of appearing when the appeal is in the daily cause list for final hearing and is adjourned shall be Rs. 30. At the request of any party, the Registrar shall cause the order to be drawn up and the said costs to be inserted therein.

Memorandum of Objections.

12. (1) If the acknowledgment mentioned in Rule 22 (3) of Order XLI is not filed, the respondent shall together with the memorandum of objections file so many copies thereof as there are parties affected thereby.

(2) The prescribed fees for service shall be presented together with the memorandum to the Registrar.

13. If any party or the pleader of any party to whom a memorandum of objections has been tendered has refused or neglected for three days from the date of tender to give the acknowledgment mentioned in Rule 22 (3) of Order XLI, the respondent may file an affidavit stating the facts and the Registrar may dispense with service of the copies mentioned in Rule 12 (1).

14. Rule 31 of Order XLI shall not apply to the High Court. If judgment is given orally a shorthand note thereof shall be taken by an officer of the Court and a transcript made by him shall be signed or initialled by the Judge or by the Judges concurring therein after making such corrections as may be considered necessary.

FORM No. 6-A (Order XLI-A, Rule 2).

NOTICE TO RESPONDENT.

(Cause title.)

Appeal from the _____ of the Court of
dated the _____ day of _____.

To _____ *Respondent.*

Take notice that an appeal from the above decree (*order*) has been presented by the abovenamed appellants and registered in this Court, and that if you intend to defend the same you must enter an appearance in this Court and give notice thereof to the appellant or his pleader within thirty days after service of this notice on you.

If no appearance is entered on your behalf by yourself, your pleader or some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

The address for service of the appellant is that of his pleader Mr. A. B. of (*insert address*) Madras.

(If the appellant appears in person, insert his address for service).

Given under my hand and the seal of the Court,
this _____ day of _____ 19 _____.

[Interlocutory application No. _____ of 19 _____ has been made by appellant, and execution has been stayed (*or other order made*) by order dated the day of 19 _____.]

FORM No. 6-B (Order XLI-A, Rule 3).

MEMORANDUM OF APPEARANCE.

(Cause title.)

Take notice that the _____ respondent intends to appear and defend the above appeal, and that his address for service of all notices and process is (*insert address*).

The said respondent requires a list of the papers which the appellant proposes to translate and print.

Dated the day of 19 .

(Signed C. D.,
Vakil for Respondent.

To the Registrar, High Court of Judicature, Madras.

ORDER XLI-B.

1. The rules of Order XLI-A shall apply so far as may be to appeals to the High Court of Madras under clause 15 of the Letters Patent of the said Court:

Provided that it shall not be necessary to file copies of the judgment and decree appealed from.

2. Notice of the appeal shall be given in manner prescribed by Order XLI-A, Rule 6, or if the party to be served has appeared in person, in manner prescribed by Rule 5 of the said Order.

ORDER XLII.

Appeals from Appellate Decrees.

1. The rules of Order XLI and Order XLI-A shall apply, so far as may be, to appeals to the High Court of Judicature at Madras from appellate decrees with the modifications contained in this Order.

2. (1) The memorandum of appeal shall be printed or typewritten and shall be accompanied by the following papers:—

A copy thereof; one certified copy and one plain printed or typewritten copy of the decrees of Court of first instance and of the Appellate Court; and four printed copies of each of the judgments of the said Courts, one copy of each judgment being a certified

copy; and the receipt of the accountant of the Court for the sum prescribed by the rules of Court.

(2) If any ground of appeal is based upon the construction of a document, a printed or type-written copy of such document shall be presented with the memorandum of appeal:

Provided that if such document is not in the English language and the appellant appears by a pleader, an English translation of the document certified by the pleader to be a correct translation shall be presented.

(3) If the appellant fails to comply with this rule, the appeal may be dismissed.

ORDER XLIII.

Appeals from Orders.

1. An appeal shall lie from the following orders under the provisions of Sec. 104, namely:—

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;
- (b) an order under rule 10 of Order VIII pronouncing judgment against a party;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*;
- (e) an order under rule 4 of Order X pronouncing judgment against a party;
- (f) an order under rule 21 of Order XI;

- (g) an order under rule 10 of Order XVI for the attachment of property;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of suit;
- (l) an order under rule 10 of Order XXII giving or refusing to give leave;
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (o) an order under rule 3 or rule 8 of Order XXXIV refusing to extend the time for the payment of mortgage-money;
- (p) orders in interpleader suits under rule 3, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX;
- (s) an order under rule 1 or rule 4 of Order XL;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;

- (u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;
- (v) an order made by any Court other than a High Court refusing the grant of a certificate under the rule 6 of Order XLV;
- (w) an order under rule 4 of Order XLVII granting an application for review.

2. The rules of Order XLI and of Order XLI-A shall apply, so far as may be, to appeals from the orders specified in Rule 1 and other orders of any civil court from which an appeal to the High Court is allowed under any provision of law;

Provided that in the case of appeals against interlocutory orders made prior to decree, the Court which passed the order appealed from shall not send the records of the case unless an order has been made for stay of further proceedings in that Court.

3. (1) The provision of Order XLII shall apply, so far as may be, to appeals from appellate Orders.

(2) A memorandum of appeal from any appellate order shall be accompanied by a certified copy of the judgment and of the order of the Court of first instance, and by a certified copy of the judgment and of the order of the appellate Court.

(3) If any ground of appeal is based upon the construction of a document, a printed or type-written copy of such document shall be presented with the memorandum of appeal:

Provided that, if such document is not in the English language and the appellant appears by a pleader, an English translation of the document certified by a pleader to be a correct translation shall be presented.

VII.

APPEALS FROM THE ORIGINAL SIDE,
HIGH COURT.*(Original Side Rules.)*

ORDER XXVII.

Appeals.

1. A memorandum of appeal shall be headed as in Form No. 2 and shall be accompanied by a certificated copy of the decree and judgment, or order amounting to a judgment appealed from, and a notice to the respondent, in Form No. 45, and also a copy thereof, signed by the appellant, or his pleader. (Old Rr. 347-361—*Cf.* R. S. C., O. 58).

The provisions of Order IV, rules 2 to 4 of these rules, inclusive, with respect to summons to a defendant, shall apply to the said notice and copy.

2. The appellant shall, with his memorandum of appeal present an application for a copy of the transcript of the evidence taken down in shorthand, if any; within fourteen days from the date when the Registrar intimates the cost of making such transcript the appellant shall bring into Court court-fee stamps for the amount specified in the said intimation and, in default, the Registrar shall post the case for the orders of the Master. Upon the required court-fee stamps being brought into Court the Registrar shall prepare two copies of the said transcript, one for the use of the Court and one for the use of the appellant.

In cases in which the evidence has not been taken down in shorthand, the appellant shall, with his memorandum of appeal, present an application for the Judge's notes of evidence, if any, and the Registrar shall take the directions of the Judge thereon and intimate to the appellant the order made thereon and the costs of such copy if allowed. Within fourteen days from the date of the said intimation, the appellant

shall bring into Court court-fee stamps for the amount specified in the said intimation, and in default the Registrar shall post the case for the orders of the Master. Upon the required court-fee stamps being brought into Court the Registrar shall prepare two copies of the said notes, one for the use of the Court, and one for the use of the appellant.

The costs of such copies shall be costs in the appeal.

3. A transcript may be made and a copy supplied to the applicant in accordance with Order XVI, rule 12, of these rules. A copy of the transcript must, at the same time be paid for by the applicant for the use of the appellate Court.

3(a). When the party or the pleader intimates under rule 12 (1) of Order XVI that a transcript is required, the cost of the preparation of the copy or copies applied for shall be calculated by the officer and intimated to the party or his pleader, who within three days of the receipt of the said intimation shall deposit the necessary charges into Court. The transcript shall then be made and copies supplied according to the rule regulating the supply of copies.

4. In any case in which the appellant does not propose to rely for the purpose of the appeal on any oral evidence adduced in the case, he shall file a statement to that effect along with his memorandum of appeal and it shall then be necessary to apply for or obtain or print either the transcript of the shorthand notes or the Judge's notes of evidence.

In cases in which the appellant has filed such statement the respondent shall be at liberty within fourteen days of his filing his memorandum of appearance to apply for a copy of the transcript of the evidence or Judge's notes of evidence as the case may be and the procedure indicated in rule 2 above shall be followed and the transcript or notes of evidence shall be part of the respondent's case.

5. If the respondent intends to defend the appeal, he shall within fourteen days from the date of service of the notice of appeal, or within such other time as may be fixed in the notice of appeal by the Registrar, file in Court, and deliver to the appellant, a memorandum of appearance, in Form No. 46. (Old R. 350—Cr. R. S. C., O. 58, R. 3).

The respondent or his pleader shall, at any time after filing his memorandum of appearance, be entitled to obtain on application to the appellant or his pleader a list of all the papers and documents to be included in the appellant's case.

6. The appellant's case shall consist of the following documents arranged so far as possible in the following order:—

- (1) Index;
- (2) Plaint or original petition;
- (3) Written statement;
- (4) Issues, and other relevant interlocutory proceedings;
- (5) Judgment;
- (6) Decree or order;
- (7) Memorandum of appeal;
- (8) Transcript or notes of evidence, if any;
- (9) Such other papers as are relevant and necessary for the purposes of the appeal, which shall be arranged according to their exhibit marks, if any, and otherwise in chronological order.

The respondent's case shall consist of the memorandum of objections (if any) and any proceedings or exhibits not printed by the appellant which are relevant or necessary for the purposes of the appeal or memorandum of objections, together with an index.

7. The case of the appellant, or respondent, shall be printed in accordance with Order II, rule 1, of these rules, and shall be properly paged, and furnished with

an index, which shall contain the description and date of documents in chronological order. It shall not be necessary to print the cause-title, or other formal parts, of the several proceedings, except in the case of the first pleading, and of the memorandum of appeal.

8. If the appellant desires that the printing of his case should be done by the Court, he shall file along with his Memorandum of Appeal or within such other time as may be allowed an application for translation and printing in the form prescribed for first appeals under the Code.

If the respondent desires that his case should be printed by the Court, he shall file a similar application within fourteen days after filing his Memorandum of Appearance.

In cases in which the appellant or respondent elects to print his own case privately he shall file the proper number of printed copies in Court, within two months of the filing of the Memorandum of Appeal or Memorandum of Appearance and the same shall be examined, and compared with the original record by an officer of the Court.

The party printing shall, on demand in writing, furnish to any other party to the appeal, and upon payment of the usual charges for printed copies, such copies of his case as may be required, not exceeding five.

9. At any time after the admission of the appeal, any party may apply, upon notice of motion, with respect to the following matters:—

- (1) that the appeal may be rejected, on any ground on which the admission thereof might have been refused by the Court;
- (2) that any other party may be ordered to give security for the costs of the appeal or of the original suit or of both;
- (3) for a stay of execution.

Unless otherwise ordered, not less than two clear days' notice of the application shall be given to the opposite party.

10. Except in cases where the directions of the Court are necessary, applications relating to the matters hereunder mentioned shall be made before and heard by the Master or Registrar on Master's or Registrar's summons:—

- (1) for an order for change of attorneys or pleaders;
- (2) for issue of fresh notice of an appeal or other process or for an order for substituted service of notice of appeal or other process;
- (3) for an order permitting the withdrawal of an appeal by consent or where the other side has not appeared;
- (4) for appointment or discharge of a next friend or guardian *ad litem* to a minor;
- (5) for entering in the record the name of the representative of a deceased appellant, petitioner or respondent;
- (6) that the printing of the whole, or a specified part, of the record may be dispensed with;
- (7) all other matters which are merely processual or relate of the preparation of the appeal:

Provided that the Master or Registrar may in his discretion direct that any application be posted before a bench for disposal.

The Master or Registrar shall have power to make an order for payment of costs of any application heard by him.

11. In case of urgency, a memorandum of appeal, or a notice of motion, may be presented to the first division bench or a Judge, sitting for the disposal

of civil business, and the Court may thereupon make such order as it thinks fit.

12. If the Master or Registrar dispenses with printing the record, the appellant shall unless otherwise ordered, within 14 days from the date of the order dispensing with such printing, file in Court three copies of the pleadings in the Court of first instance, and in the appellate Court, and of the judgment, and decree or order, appealed against, for the use of the Court. If a copy of the Judge's notes had been granted to the appellant, or a shorthand note has been taken, he shall at the same time file three copies thereof.

13. The preparation and printing of the record and the payment of charges therefor shall be regulated by the rules for the time being in force relating to first appeals under the Code.

SPECIAL RULES RELATING TO APPEALS FORM ORDERS.

14. An appeal from an order shall be made to the Court by a Notice of Motion stamped with the fee prescribed by serial number 36 of Appendix II of the High Court Fees Rules, 1925. It shall be issued in the same manner as a Notice of Motion on the Original Side and shall be served not less than ten clear days before the date fixed for hearing.

15. The appellant shall, seven days before the date fixed for hearing, file in Court three typed copies of the Judgment or Order appealed against and of all pleadings, affidavits or documents used or read at the original hearing on which he intends to rely or to which he intends to refer.

16. The respondent shall file in Court three days before the hearing three typed copies of all pleadings, affidavits or documents used or read at the original hearing on which he intends to rely or to which he intends to refer.

17. Such Notice of Motion shall be posted before the bench hearing appeals from the Original Side not less than 14 days after the date of issue. Such appeal from an order may thereupon be disposed of without printing, and the costs of supplying the typed copies filed by the successful party to the Court shall be costs in the appeal.

PAUPERS.

18. An application for leave to appeal, or defend an appeal, *in forma pauperis*, shall be made by Notice of Motion. If the application is made by an appellant, it shall be entitled in the matter of the intended appeal and shall be accompanied by a memorandum of appeal containing the schedule of the property prescribed by Order XXXIII, Rule 2 of the Code, and signed and verified by the applicant. If the application is made by a respondent, it shall be accompanied by an affidavit containing the said schedule of property.

19. If an enquiry into the pauperism of the applicant is directed, the application shall be adjourned to a fixed day and the Registrar shall insert the same in the summons as the return-day. The applicant shall take out the summons in manner prescribed by Order XIII, Rule 1 of these rules; and shall deliver the copies thereof together with the prescribed fees, to the Sheriff, for service on the Government Solicitor and on the opposite parties; or, if a party is resident beyond the local limits of the jurisdiction, shall apply to the Registrar for transmission thereof to the proper authority, for service on him.

An affidavit of service shall be filed in Court not less than two days before the return-day.

20. Subject to the provisions of this order, these rules shall, so far as the same are applicable, apply to all proceedings in appeals from the Original Side of the Court.

VIII.

THE JUDICIAL COMMITTEE RULES, 1925.

ST. R. AND O., 1925, No. 440-L.-4.

At the Court at Buckingham Palace.

PRESENT.—The King's Most Excellent Majesty, Lord President, Lord Chamberlain, Chancellor of the Duchy or Lancaster and Sir George Lloyd.

Whereas there was this day read at the Board a representation from the Judicial Committee of the Privy Council in the words following, viz.:—

“The Lords of the Judicial Committee having taken into consideration the Practice and Procedure in accordance with which the general Appellate Jurisdiction of Your Majesty in Council is now exercised and being of opinion that the Rules regulating the said Practice and Procedure ought to be amended Their Lordships do hereby agree humbly to recommend to Your Majesty that with a view to such amendment certain Orders in Council regulating the said Practice and Procedure, viz., the Orders in Council dated respectively the 21st day of December, 1908, (a) the 23rd day of May, 1916, (b) the 25th day of March, 1920, (c) the 9th day of March, 1921, (d) and the 15th day of March, 1922, (e) amending the said Practice and Procedure ought to be revoked as from the 1st day of January, 1926, and that the several Rules hereunto annexed ought to be substituted therefor and ought to come into operation on that date.”

His Majesty having taken the said representation into consideration was pleased, by and with the advice of His Privy Council, to approve thereof and to order, as it is hereby ordered, that the said Orders in Council in the said representation mentioned be and the same are hereby revoked as from the 1st day of January, 1926, and that the Rules hereunto annexed be substituted therefor to come into operation on that date.

Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

2nd May, 1925.

M. P. A. HANKEY.

1. (1) In these Rules, unless the context otherwise requires:—

“Appeal” means an Appeal to His Majesty in Council;

“Judgment” includes decree, order, sentence, or decision of any Court, Judge, or Judicial Officer;

“Record” means the aggregate of papers relating to an Appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before His Majesty in Council on the hearing of the Appeal;

“Registrar” means the Registrar or other proper officer having the custody of the records in the Court appealed from;

“Abroad” means the country or place where the Court appealed from is situate;

“Agent” means a person qualified by virtue of Her late Majesty’s Order in Council of the 6th March, 1896, to conduct proceedings before His Majesty in Council on behalf of another.

“Party” and all words descriptive of parties to proceedings before His Majesty in Council (such as “Petitioner,” “Appellant,” “Respondent”) mean, in respect of all acts proper to be done by an Agent, the Agent of the party in question where such party is represented by an Agent;

“Respondent” includes Intervener;

“Month” means calendar month;;

(2) Where by these Rules any step is required to be taken in England in connection with proceedings before His Majesty in Council, whether in the way of lodging a Petition or other document, entering an Appearance, lodging security, or otherwise, such step shall be taken in the Registry of the Privy Council, Downing Street, London.

LEAVE TO APPEAL.

2. All Appeals shall be brought either in pursuance of leave obtained from the Court appealed from, or, in the absence of such leave, in pursuance of special leave to appeal granted by His Majesty in Council upon a Petition in that behalf presented by the intending Appellant.

SPECIAL LEAVE TO APPEAL.

3. A Petition for special leave to appeal to His Majesty in Council shall state succinctly and clearly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise His Majesty whether such leave ought to be granted, and shall be signed by the Counsel who attends at the hearing or by the party himself if he appears in person. The Petition shall deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which special leave to appeal is sought.

4. The Petitioner shall lodge at least five copies of his Petition for special leave to appeal together with the Affidavit in support thereof prescribed by Rule 50 hereinafter contained, and unless a Caveat as prescribed by Rule 48 has been lodged by the other parties who appeared in the Court below, an Affidavit of service of notice of the intended application upon such parties or their Solicitors or Agents, either abroad or in England.

5. A Petition for special leave to appeal may be lodged at any time after the date of the judgment sought to be appealed from, but the Petitioner shall, in every case, lodge his Petition with the least possible delay.

6. Where the Judicial Committee agree to advise His Majesty to grant special leave to appeal, they shall, in their Report, specify the amount of the security for costs (if any) to be lodged by the Petitioner, and shall, unless the circumstances of a particular case

render such a course unnecessary, provide for the transmission of the Record by the Registrar to the Registrar of the Privy Council and for such further matters as the justice of the case may require. Unless otherwise ordered the security shall be lodged at any time before the Appellant enters an Appearance.

7. Save as by the four last preceding Rules otherwise provided, the provisions of Rules 47 to 50 and 52 to 59 (all inclusive) hereinafter contained shall apply *mutatis mutandis* to Petitions for special leave to appeal.

8. Rules 3 to 7 (both inclusive) shall apply *mutatis mutandis* to Petitions for leave to appeal *in forma pauperis*, but in addition to the Affidavits referred to in Rule 4 every such Petition shall be accompanied by an Affidavit from the Petitioner stating that he is not worth 25*l.* in the world excepting his wearing apparel and his interest in the subject-matter of the intended Appeal, and that he is unable to provide sureties, and also by a certificate of Counsel that the Petitioner has reasonable ground of appeal.

9. Where a Petitioner obtains leave to appeal *in forma pauperis*, he shall not be required to lodge security for the costs of the Respondent or to pay any Council Office fees.

10. A Petitioner whose Petition for leave to appeal *in forma pauperis* is dismissed may, notwithstanding such dismissal, be excused from paying the Council Office fees usually chargeable to a Petitioner in respect of a Petition for leave to appeal, if His Majesty in Council, on the advice of the Judicial Committee, shall think fit so to order.

RECORDS AND APPEARANCE BY APPELLANT.

11. As soon as the Appeal has been admitted, whether by an Order of the Court appealed from or by an Order of His Majesty in Council granting

special leave to appeal, the Appellant shall without delay take all necessary steps to have the Record transmitted to the Registrar of the Privy Council, and the Registrar shall, with all convenient speed, certify to the Registrar of the Privy Council that the Respondent has received notice, or is otherwise aware, of the Order of the Court appealed from admitting the Appeal, or of the Order of His Majesty in Council giving the Appellant special leave to appeal, and has also received notice, or is otherwise aware, of the despatch of the Record to England. Where an Appellant who has obtained special leave to appeal by an Order of His Majesty in Council fails to have the Record transmitted to the Registrar of the Privy Council with due diligence, the Registrar of the Privy Council shall call upon the Appellant to explain his default, and if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar may issue a Summons to the Appellant calling upon him to show cause before the Judicial Committee at a time to be named in the said Summons why the special leave to appeal granted should not be rescinded. The Respondent shall be entitled to be heard before the Judicial Committee in the matter of the said Summons and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said Summons recommend to His Majesty to rescind the grant of special leave to appeal or give such other directions therein as the justice of the case may require.

12. The Record shall be printed in accordance with the Rules contained in Schedule A hereto. It may be printed either abroad or in England, if printed abroad the parties in England shall, upon perusal, consider whether the order of the documents is in accordance with these Rules, and if it is not, they shall agree upon the proper order. The Appellant shall then re-arrange copies of the Record for the use of the Judicial Committee and the other par-

ties. In the event of the parties being unable to agree, the matter shall be referred to the Registrar of the Privy Council who, if he thinks fit, may require the parties to attend before the Judicial Committee for directions.

13. Where the Record is printed abroad, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council 40 copies of such Record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof, and by affixing thereto the seal, if any, of the Court appealed from.

14. Where the Record is to be printed in England, the Registrar shall, at the expense of the Appellant, transmit to the Registrar of the Privy Council one certified copy of such Record, together with an index of all the papers and exhibits in the case. No other certified copy of the Record shall be transmitted to the Agent in England by or on behalf of the parties to the Appeal.

15. Where part of the Record is printed abroad and part is to be printed in England, Rules 13 and 14 shall, as far as practicable, apply to such parts as are printed abroad and such as are to be printed in England respectively.

16. The reasons given by the Judge, or any of the judges, for or against any judgment pronounced in the course of the proceedings out of which the Appeal arises, shall by such judges be communicated in writing to the Registrar and shall be included in the Record.

17. The Registrar, as well as the parties and their Agents, shall endeavour to exclude from the Record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the Appeal, and, generally, to reduce the bulk of the Record as far as practicable, taking special care to avoid the duplication of documents and the un-

necessary repetition of headings and other merely formal parts of documents; but the documents omitted to be printed or copied shall be enumerated in a type-written list to be transmitted with the Record.

18. Where in the course of the preparation of a Record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the Record, as finally printed (whether abroad or in England), shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

19. As soon as the record is received in the Registry of the Privy Council, it shall be registered in the said Registry, with the date of arrival, the names of the parties, and the description whether "printed" or "written." A Record, or any part of a Record, not printed in accordance with the Rules contained in Schedule A hereto shall be treated as written. Appeals shall be numbered consecutively in each year in the order in which the Records are received in the said Registry.

20. The parties shall be entitled to inspect the Record and to extract all necessary particulars therefrom for the purpose of entering an Appearance.

21. The Appellant shall enter an Appearance before taking any step in the prosecution of the Appeal, and after entering such Appearance shall forthwith give notice thereof to the Respondent, if the latter has entered an Appearance.

22. Where the Record arrives in England either wholly written, or partly written and partly printed, the Appellant shall, within a period of four months from the date of such arrival in the case of Appeals from Courts situate in any of the countries or places named in Schedule B hereto, and within a period

of two months from the same date in the case of Appeals from any other Court, enter an Appearance and bespeak a type-written copy of the Record, or of such parts thereof as it may be necessary to have copied, and shall engage to pay the cost of preparing such copy at the following rates per folio typed (exclusive of tabular matter)—*2d.* per folio of English matter, *2½d.* per folio of Indian matter, and *3½d.* per folio of foreign matter; and shall also engage to pay at such price as shall be fixed by the Registrar of the Privy Council the cost of printing at least 50 copies thereof.

23. As soon as the Appellant has obtained the typewritten copy of the Record bespoken by him, he shall proceed, with due diligence, to arrange the documents in suitable order, to check the index, to insert marginal notes and check the same with the index, and, generally, to do whatever may be required for the purpose of preparing the copy for the printer, in accordance with the Rules contained in Schedule A hereto, and shall, if the Respondent has entered an Appearance, submit the copy, as prepared for the printer, to the Respondent for his approval. In the event of the parties being unable to agree, the matter shall be referred to the Registrar of the Privy Council who, if he thinks fit, may require the parties to attend before the Judicial Committee for directions.

24. As soon as the typewritten copy of the Record is ready for the printer, the Appellant shall lodge it in the Registry of the Privy Council for printing by a printer selected by the Registrar of the Privy Council, and at the same time shall lodge the amount of the estimated cost of printing the Record.

25. Whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the parties, with the sanction of the Registrar of the Privy Council, may submit such question of law to the Judicial Committee in the

form of a Special Case, and print such parts only of the Record as may be necessary for the discussion of the same, provided that nothing herein contained shall in any way prevent the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit, and that, in order to promote such arrangements and simplification of the matter in dispute, the said Registrar may call the parties before him, and having heard them, and examined the Record, may report to the Judicial Committee as to the nature of the Proceedings.

26. The Registrar of the Privy Council shall, as soon as the proof prints of the Record are ready, give notice to all parties who have entered an Appearance requesting them to attend at the Registry of the Privy Council at a time to be named in such notice in order to examine the said proof prints and compare the same with the certified Record, and shall, for that purpose, furnish each of the said parties with one proof print. After the examination has been completed, the Appellant shall, without delay, lodge his proof print, duly corrected and (so far as necessary) approved by the Respondent, and the Registrar of the Privy Council shall thereupon cause the copies of the Record to be struck off from such proof print.

27. Each party who has entered an Appearance shall be entitled to receive, for his own use, six copies of the Record.

28. Subject to any special direction from the Judicial Committee to the contrary, the costs of and incidental to the printing of the Record shall form part of the costs of the Appeal, but the costs of and incidental to the printing of any document objected to by one party, in accordance with Rule 18, shall, if such document is found on the taxation of costs to be unnecessary or irrelevant, be disallowed to, or borne by, the party insisting on including the same in the Record.

PETITION OF APPEAL.

29. The Appellant shall lodge his Petition of Appeal—

- (a) Where the Record arrives in England printed, within a period of four months from the date of such arrival in the case of Appeals from Courts situate in any of the countries or places named in Schedule B hereto, and within a period of two months from the same date in the case of Appeals from any other Courts;
- (b) Where the Record arrives in England written within a period of one month from, but not before, the date of the completion of the printing thereof:

Provided that nothing in this Rule contained shall preclude the Appellant from lodging his Petition of Appeal prior to the arrival of the Record, or the completion of the printing thereof, if there are special reasons why, in the opinion of the Registrar of the Privy Council, it should be desirable for him to do so.

30. The Petition of Appeal shall be lodged in the form prescribed by Rule 47 hereinafter contained. It shall recite succinctly and, as far as possible, in chronological order, the principal steps in the proceedings leading up to the Appeal from the commencement thereof down to the admission of the Appeal, but shall not contain argumentative matter or travel into the merits of the case.

31. The Appellant shall, after lodging his Petition of Appeal, serve a copy thereof without delay on the Respondent, as soon as the latter, has entered an Appearance, and shall endorse such copy with the date of the lodgment.

WITHDRAWAL OF APPEAL.

32. Where an Appellant, who has not lodged his Petition of Appeal, desires to withdraw his Appeal,

he shall give notice in writing to that effect to the Registrar of the Privy Council, and the said Registrar shall, with all convenient speed after the receipt of such notice, by letter notify the Registrar of the Court appealed from that the Appeal has been withdrawn, and the said Appeal shall thereupon stand dismissed as from the date of the said letter without further Order.

33. Where an Appellant, who has lodged his Petition of Appeal, desires to withdraw his Appeal, he shall present a Petition to that effect to His Majesty in Council. On the hearing of any such Petition a Respondent who has entered an Appearance in the Appeal shall, subject to any agreement between him and the Appellant to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the Respondent has not entered an Appearance; or, having entered an Appearance, consents in writing to the prayer of the Petition, the Petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a Consent Petition under the provisions of Rule 56 hereinafter contained.

NON-PROSECUTION OF APPEAL.

34. Where an Appellant takes no step in prosecution of his Appeal within a period of four months from the date of the arrival of the Record in England in the case of an Appeal from a Court situate in any of the countries or places named in Schedule B hereto, or within a period of two months from the same date in the case of an Appeal from any other Court, the Registrar of the Privy Council shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been prosecuted, and the Appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to any Respondent who has entered an Appearance in the Appeal.

35. Where an Appellant who has entered an Appearance—

- (a) fails to bespeak a copy of a written Record, or of part of a written Record, in accordance with, and within the periods prescribed by, Rule 22; or
- (b) having bespoken such copy within the periods prescribed by Rule 22, fails thereafter to proceed with due diligence to take all such further steps as may be necessary for the purpose of completing the printing of the said Record; or
- (c) fails to lodge his Petition of Appeal within the periods respectively prescribed by Rule 29;

the Registrar of the Privy Council shall call upon the Appellant to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar shall, with all convenient speed, by letter notify the Registrar of the Court appealed from that the Appeal has not been effectually prosecuted, and the appeal shall thereupon stand dismissed for non-prosecution as from the date of the said letter without further Order, and a copy of the said letter shall be sent by the Registrar of the Privy Council to all the parties who have entered an Appearance in the Appeal.

36. Where an Appellant, who has lodged his Petition of Appeal, fails thereafter to prosecute his Appeal with due diligence, the Registrar of the Privy Council shall call upon him to explain his default, and, if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar shall issue a summons to the Appellant calling upon him to show cause before the Judicial Committee at a time to be named in the said Summons why the Appeal should not be dismissed

for non-prosecution: Provided that no such Summons shall be issued by the said Registrar before the expiration of one year from the date of the arrival of the Record in England. If the Respondent has entered an Appearance in the Appeal, the Registrar of the Privy Council shall send him a copy of the said Summons, and the Respondent shall be entitled to be heard before the Judicial Committee in the matter of the said Summons at the time named and to ask for his costs and such other relief as he may be advised. The Judicial Committee may, after considering the matter of the said Summons, recommend to His Majesty the dismissal of the Appeal for non-prosecution, or give such other direction therein as the justice of the case may require.

37. An appellant whose Appeal has been dismissed for non-prosecution may present a petition to His Majesty in Council praying that his Appeal may be restored.

APPEARANCE BY RESPONDENT.

38. The Respondent may enter an Appearance at any time between the arrival of the Record and the hearing of the Appeal, but if he unduly delays entering an Appearance he shall bear, or be disallowed, the costs occasioned by such delay, unless the Judicial Committee otherwise direct.

39. The Respondent shall forthwith after entering an Appearance give notice thereof to the Appellant, if the latter has entered an Appearance.

40. Where there are two or more Respondents, and only one, or some of them enter an Appearance, the Appearance Form shall set out the names of the appearing Respondents.

41. Two or more Respondents may, at their own risk as to costs, enter separate Appearances in the same Appeal.

42. A Respondent who has not entered an Appearance shall not be entitled to receive any notices

relating to the appeal from the Registrar of the Privy Council, nor be allowed to lodge a case in the appeal.

43. Where a Respondent fails to enter an Appearance in an Appeal, the following Rules shall, subject to any special Order of the Judicial Committee to the contrary, apply:—

(a) If the non-appearing Respondent was a Respondent at the time when the Appeal was admitted, whether by the Order of the Court appealed from or by an Order of His Majesty in Council, giving the Appellant special leave to appeal, and it appears from the terms of the said Order, or Order in Council, or otherwise from the Record, or from a Certificate of the Registrar of the Court appealed from, that the said non-appearing Respondent has received notice, or was otherwise aware, of the Order of the Court, appealed from admitting the Appeal, or of the Order of His Majesty in Council, giving the Appellant special leave to appeal, and has also received notice, or was otherwise aware, of the despatch of the Record to England, the appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date of the lodging of the Petition of Appeal;

(b) If the non-appearing Respondent was made a Respondent by an Order of His Majesty in Council subsequently to the admission of the Appeal, and it appears from the Record, or from a Supplementary Record, or from a Certificate of the Registrar of the Court appealed from, that the said non-appearing Respondent has received notice, or was otherwise aware, of any intended application to bring him on the record as a Respondent, the Appeal may, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the said non-appearing Respondent at any time after the expiration of three months from the date on which he shall have been

served with a copy of His Majesty's Order in Council bringing him on the Record as a Respondent:

Provided that where it is shown to the satisfaction of the Registrar of the Privy Council, by Affidavit or otherwise, either that an Appellant has made every reasonable endeavour to serve a non-appearing Respondent with the notices mentioned in clause (a) and (b) respectively and has failed to effect such service, or that it is not the intention of the non-appearing Respondent to enter an Appearance to the Appeal, the Appeal may, without further Order in that behalf and at the risk of the Appellant, be proceeded with *ex parte* as against the said non-appearing Respondent.

44. A Respondent who desires to defend an Appeal *in forma pauperis* may present a Petition to that effect to His Majesty in Council, which Petition shall be accompanied by an Affidavit from the Petitioner stating that he is not worth £25 in the world excepting his wearing apparel and his interest in the subject-matter of the Appeal.

PETITIONS GENERALLY.

45. All Petitions for orders or directions as to matters of practice or procedure arising after the lodging of the Petition of Appeal and not involving any change in the parties to an Appeal shall be addressed to the Judicial Committee. All other Petitions shall be addressed to His Majesty in Council, but a Petition which is properly addressed to His Majesty in Council may include, as incidental of the relief thereby sought, a prayer for orders or directions as to matters of practice or procedure.

46. Where an Order made by the Judicial Committee does not embody any special terms or include any special directions, it shall not be necessary to draw up such Order, unless the Committee otherwise direct, but a Note thereof shall be made by the Registrar of the Privy Council.

47. All Petitions shall consist of paragraphs numbered consecutively and shall be written, typewritten, or lithographed, on brief paper with quarter margin and endorsed with the name of the Court appealed from, the full title and Privy Council number of Appeal to which the Petition relates or the full title of the Petition (as the case may be), and the name and address of the London Agent (if any) of the Petitioner, but need not be signed, except as provided by Rule 3. Unless the Petition is a Consent Petition within the meaning of Rule 56 at least five copies thereof shall be lodged.

48. Where a Petition is expected to be lodged, or has been lodged, which does not relate to any pending Appeal of which the Record has been registered in the Registry of the Privy Council, any person claiming a right to appear before the Judicial Committee on the hearing of such Petition may lodge a Caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar of the Privy Council notice of the lodging of the petition, if at the time of the lodging of the Caveat such Petition has not yet been lodged, and, if and when the Petition has been lodged, to require the Petitioner to serve him with a copy of the Petition, and to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of his Petition. The Caveator shall forthwith after lodging his Caveat give notice thereof to the Petitioner, if the Petition has been lodged.

49. Where a Petition is lodged in the matter of any pending Appeal of which the Record has been registered in the Registry of the Privy Council, the Petitioner shall serve any party who has entered an Appearance in the Appeal with a copy of such Petition, and the Party so served shall thereupon be entitled to require the Petitioner to furnish him, at his own expense, with copies of any papers lodged by the Petitioner in support of his Petition.

50. A Petition not relating to any Appeal of which the Record has been registered in the Registry of the Privy Council, and any other Petition containing allegations of fact which cannot be verified by reference to the registered Record or any certificate or duly authenticated statement of the Court appealed from, shall be supported by Affidavit. Where the Petitioner prosecutes his Petition in person, the said Affidavit shall be sworn by the Petitioner himself and shall state that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the Petition are true. Where the Petitioner is represented by an Agent, the said Affidavit shall be sworn by such Agent and shall, besides stating that, to the best of the deponent's knowledge, information, and belief, the allegations contained in the Petition are true, show how the deponent obtained his instructions and the information enabling him to present the Petition.

51. A Petition for an Order of Revivor or Substitution shall be accompanied by a certificate or duly authenticated statement from the Court appealed from showing who, in the opinion of the said Court, is the proper person to be substituted, or entered, on the Record in place of, or, in addition to, a party who has died or undergone a change of status.

52. The Registrar of the Privy Council may refuse to receive a Petition on the grounds that it discloses no reasonable cause of appeal, or is frivolous, or contains scandalous matter, but the Petitioner may appeal, by way of motion, from such refusal to the Judicial Committee.

53. As soon as a Petition and all necessary documents are lodged the petition shall thereupon be deemed to be set down.

54. On each day appointed by the Judicial Committee for the hearing of Petitions the Registrar of the Privy Council shall, unless the Committee other-

wise direct, put in the paper for hearing all such Petitions as have been set down: Provided that, in the absence of special circumstances of urgency to be shown to the satisfaction of the said Registrar, no Petition, if opposed, shall be put in the paper for hearing before the expiration of ten clear days from the lodging thereof, unless the Opponent consents to the Petition being put in the paper on an earlier day.

55. Subject to the provisions of the next following Rule, the Registrar of the Privy Council shall, as soon as the Judicial Committee have appointed a day for the hearing of a petition, notify all parties concerned by Summons of the day so appointed.

56. Where the prayer of a Petition is consented to in writing by the opposite party, or where a Petition is of a formal and non-contentious character, the Judicial Committee may, if they think fit, make their Report to His Majesty on such Petition, or make their Order thereon, as the case may be, without requiring the attendance of the parties in the Council Chamber, and the Registrar of the Privy Council shall not in any such case issue the Summons provided for by the last-preceding Rule, but shall with all convenient speed after the Committee have made their Report or Order notify the parties that the Report or Order has been made and of the date and nature of such Report or Order.

57. A Petitioner who desires to withdraw his Petition shall give notice in writing to that effect to the Registrar of the Privy Council. Where the Petition is opposed, the Opponent shall, subject to any agreement between the parties to the contrary, be entitled to apply to the Judicial Committee for his costs, but where the Petition is unopposed, or where, in the case of an opposed Petition, the parties have come to an agreement as to the costs of the Petition, the Petition may, if the Judicial Committee think fit, be disposed of in the same way *mutatis mutandis* as a

Consent Petition under the provision of the last-preceding Rule.

58. Where a Petitioner unduly delays bringing a Petition to a hearing, the Registrar of the Privy Council shall call upon him to explain the delay, and if no explanation is offered, or if the explanation offered is, in the opinion of the said Registrar, insufficient, the said Registrar may, after notifying all parties interested by Summons of his intention to do so, put the Petition in the paper for hearing on the next following day appointed by the Judicial Committee for the hearing of Petitions for such directions as the Committee may think fit to give thereon.

59. At the hearing of a Petition not more than one Counsel shall be admitted to be heard on a side.

CASE.

60. No party to an Appeal shall be entitled to be heard by the Judicial Committee unless he has previously lodged his Case in the Appeal: Provided that where a Respondent who has entered an Appearance does not desire to lodge a Case in the Appeal, he may give the Registrar of the Privy Council notice in writing of his intention not to lodge any Case, while reserving his right to address the Judicial Committee on the question of costs.

61. The Case may be printed either abroad or in England, and shall, in either event, be printed in accordance with the Rules I to III contained in Schedule A hereto, every tenth line thereof being numbered in the margin, and shall be signed by at least one of the Counsel who attends at the hearing of the Appeal or by the party himself if he conducts his Appeal in person.

62. Each party shall lodge 30 prints of his Case.

63. The Case shall consist of paragraphs numbered consecutively and shall state, as concisely as

possible, the circumstances out of which the Appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. References by page and line to the relevant portions of the Record as printed shall, as far as practicable, be printed in the margin, and care should be taken to avoid, as far as possible, the reprinting in the Case of long extracts from the Record. The Taxing Officer, in taxing the costs of the Appeal, shall, either of his own motion, or at the instance of the opposite party, inquire into any unnecessary prolixity in the Case, and shall disallow the costs occasioned thereby.

64. Two or more Respondents may, at their own risk as to costs, lodge separate Cases in the same Appeal.

65. Each party shall, after lodging his Case, forthwith give notice thereof to the other party.

66. Subject as hereinafter provided, the party who lodges his Case first may, at any time after the expiration of three clear days from the day on which he has given the other party the notice prescribed by the last-preceding Rule, serve such other party, if the latter has not in the meantime lodged his Case with a "Case Notice," requiring him to lodge his Case within one month from the date of the service of the said Case Notice and informing him that, in default of his so doing, the Appeal will be set down for hearing *ex parte* as against him, and if the other party fails to comply with the said Case Notice, the party who has lodged his Case may, at any time after the expiration of the time limited by the said Case Notice for the lodging of the Case, lodge an Affidavit of Service (which shall set out the terms of the said Case Notice), and the Appeal shall thereupon, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the party in default: Provided that no Case Notice shall be served until after the completion of the printing, or rearrangement under Rule 12, of the Record, and also that nothing in this Rule contained

shall preclude the party in default from lodging his Case, at his own risk as regards costs and otherwise, at any time up to the date of hearing.

67. Subject to the provisions of Rule 43 and of the last preceding Rule, an Appeal shall be set down *ipso facto* as soon as the Cases on both sides are lodged, and the parties shall thereupon exchange Cases by handing one another, either at the Offices of one of Agents or in the Registry of the Privy Council, ten copies of their respective Cases.

Binding Records, etc.

68. As soon as an appeal is set down, the Appellant shall attend at the Registry of the Privy Council and obtain ten copies of the Record and Cases to be bound for the use of the Judicial Committee at the hearing. The copies shall be bound in cloth or in half leather with paper sides, and six leaves of blank paper shall be inserted before the Appellant's Case. The front cover shall bear a printed label stating the title and Privy Council number of the Appeal, the contents of the volume, and the names and addresses of the London Agents. The several documents, indicated by incuts, shall be arranged in the following order: (1) Appellant's Case; (2) Respondent's Case; (3) Record (if in more than one part, showing the separate parts by incuts, all parts being paged at the top of the page); (4) Supplemental Record (if any); and the short title and Privy Council number of the Appeal shall also be shown on the back.

69. The Appellant shall lodge the bound copies not less than four clear days before the commencement of the Sittings during which the Appeal is to be heard.

Hearing.

70. The Registrar of the Privy Council shall name a day on or before which Appeals must be set down if they are to be entered in the List of Business for the ensuing Sittings. All Appeals set down on or before

the day named shall, subject to any directions from the Committee or to any agreement between the parties to the contrary, be entered in such List of Business and shall, subject to any directions from the Committee to the contrary, be heard in the order in which they are set down.

71. The Registrar of the Privy Council shall, subject to the provisions of Rule 42, notify the parties to each Appeal by Summons, at the earliest possible date, of the day appointed by the Judicial Committee for the hearing of the Appeal, and the parties shall be in readiness to be heard on the day so appointed.

72. At the hearing of an Appeal not more than two Counsel shall be admitted to be heard on a side.

73. In Admiralty Appeals the Judicial Committee may, if they think fit, require the attendance of two Nautical Assessors.

Judgment.

74. Where the Judicial Committee, after hearing an Appeal, decide to reserve their Judgment thereon, the Registrar of the Privy Council shall in due course notify the parties by Summons of the day appointed by the Committee for the delivery of the judgment.

Costs.

75. All Bills of Costs under the Orders of the Judicial Committee on Appeals, Petitions, and other matters, shall be referred to the Registrar of the Privy Council, or such other person as the Judicial Committee may appoint, for taxation, and all such taxations shall be regulated by the Schedule of Fees set forth in Schedule C hereto.

76. The taxation of costs in England shall be limited to costs incurred in England.

77. The Registrar of the Privy Council shall, with all convenient speed after the Judicial Committee have given their decision as to the costs of an Appeal,

Petition, or other matter, issue to the party to whom costs have been awarded an Order to tax and a Notice specifying the day and hour appointed by him for taxation. The party receiving such Order to tax and Notice shall, not less than 48 hours before the time appointed for taxation, lodge his Bill of Costs (together with all necessary vouchers for disbursements) and serve the opposite party with a copy of his Bill of Costs and of the Order to tax and Notice.

78. The Taxing Officer may, if he thinks fit, disallow to any party who fails to lodge his Bill of Costs (together with all necessary vouchers for disbursements) within the time prescribed by the last-preceding Rule, or who in any way delays or impedes a taxation, the charges to which such party would otherwise be entitled for drawing his Bill of Costs and attending the taxation.

79. Any party aggrieved by a taxation may appeal from the decision of the Taxing Officer to the Judicial Committee. The Appeal shall be heard by way of motion, and the party appealing shall give three clear days' Notice of Motion to the opposite party, and shall also leave a copy of such Notice in the Registry of the Privy Council.

80. The amount allowed by the Taxing Officer on the taxation shall, subject to any appeal from his taxation to the Judicial Committee and subject to any direction from the Committee to the contrary, be inserted in His Majesty's Order in Council determining the Appeal or Petition.

81. Where the Judicial Committee directs costs to be taxed on the pauper scale, the Taxing Officer shall not allow any fees of Counsel, and shall only award to the Agents out-of-pocket expenses and a reasonable allowance to cover office expenses, such allowance to be taken at about three-eighths of the usual professional charges in ordinary Appeals. Such pauper scale shall apply to and include the application upon which leave to appeal *in forma pauperis* was granted.

82. Where the Appellant has lodged security for the Respondent's costs of an Appeal in the Registry of the Privy Council, the Registrar of the Privy Council shall deal with such security in accordance with the directions contained in His Majesty's Order in Council determining the Appeal.

Miscellaneous.

83. The Judicial Committee may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matters of practice and procedure as they shall consider just and expedient. Applications to be excused from compliance with the requirements of any of these Rules shall be addressed in the first instance to the Registrar of the Privy Council, who shall take the instructions of the Committee thereon and communicate the same to the parties. If, in the opinion of the said Registrar, it is desirable that the application should be dealt with by the Committee in open Court, he may direct the party applying to lodge in the Registry of the Privy Council, and to serve the opposite party with, a Notice of Motion returnable before the Committee.

84. Any documents lodged in connection with an Appeal, Petition, or other matter pending before His Majesty in Council or the Judicial Committee, may be amended by leave of the Registrar of the Privy Council, but if the said Registrar is of opinion that an application for leave to amend should be dealt with by the Committee in open Court, he may direct the party applying to lodge in the Registry of the Privy Council, and to serve the opposite party with, a Notice of Motion returnable before the Committee.

85. Affidavits relating to any Appeal, Petition, or other matter pending before His Majesty in Council or the Judicial Committee may be sworn before the Registrar of the Privy Council.

86. Where a party to an Appeal, Petition, or other matter pending before His Majesty in Council changes his Agent, such party, or the new Agent, shall forthwith give the Registrar of the Privy Council and the outgoing Agent notice in writing of the change, and shall amend the Appearance accordingly. Until such notices are given the former Agent shall be considered the Agent of the party until the final conclusion of the Appeal, Petition, or other matter.

87. Subject to the provisions of any Statute or of any Statutory Rule or Order to the contrary, these Rules shall apply to all matters falling within the Appellate Jurisdiction of His Majesty in Council.

88. These Rules may be cited as the Judicial Committee Rules, 1925, and they shall come into operation on the 1st day of January, 1926.

SCHEDULE A.

Rules as to Printing.

I. All Records and other proceedings in Appeals or other matters pending before His Majesty in Council or the Judicial Committee which are required by the above Rules to be printed shall be printed in the form known as Demy Quarto.

II. The size of the paper used shall be such that the sheet, when folded and trimmed will be 11 inches in height and 8½ inches in width.

III. The type to be used in the text shall be Pica type, but Long Primer shall be used in printing accounts, tabular matter, and notes. The number of lines in each page of Pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

IV. Records shall be arranged in two parts in the same volume, where practicable, *viz.* :—

Part I. The pleadings and proceedings, the transcript of the evidence of the witnesses, the

Judgments, Decrees etc., of the Courts below, down to the Order admitting the Appeal.

Part II. The exhibits and documents.

V. The Index to Part I shall be in chronological order, and shall be placed at the beginning of the volume.

The Index to Part II shall follow the order or exhibit mark, and shall be placed immediately after the Index to Part I.

VI. Part I shall be arranged strictly in chronological order, *i.e.*, in the same order as the index.

Part II shall be arranged in the most convenient way for the use of the Judicial Committee, as the circumstances of the case require. The documents shall be printed as far as suitable in chronological order, mixing Plaintiff's and Defendant's documents together when necessary. Each document shall show its exhibit mark, and whether it is a Plaintiff's or Defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter, such as

(a) a series of correspondence, or

(b) proceedings in a suit other than the one under appeal, shall be kept together. The order in the Record of the documents in Part II will probably be different from the order of the Index, and the proper page number of each document shall be inserted in the printed Index.

The parties will be responsible for arranging the Record in proper order for the Judicial Committee, and in difficult cases Counsel may be asked to settle it.

VII. The documents in Part I shall be numbered consecutively.

The documents in Part II shall not be numbered, apart from the exhibit mark.

VIII. Each document shall have a heading which shall consist of the number or exhibit mark and the description of the document in the Index, without the date.

IX. Each document shall have a marginal note which shall be repeated on each page over which the document extends, *viz.* :—

Part I.

(a) Where the case has been before more than one Court, the short name of the Court shall first appear. Where the case has been before only one Court, the name of the Court need not appear.

(b) The marginal note of the document shall then appear consisting of the number and the description of the document in the Index, with the date, except in the case of oral evidence.

(c) In the case of oral evidence, "Plaintiff's evidence" or "Defendant's evidence" shall appear beneath the name of the Court, and then the marginal note consisting of the number in the Index and the witnesses' name, with "examination", "cross-examination", or "re-examination", as the case may be.

Part II.

The word "Exhibits" shall first appear.

The marginal note of the exhibit shall then appear consisting of the exhibit mark and the description of the document in the Index, with the date.

X. The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the Index and in the Record), if desired, with the words "not printed" against it.

A long series of documents, such as accounts, rent rolls, inventories, etc., shall not be printed in full, unless Counsel so advise, but the parties shall agree to short extracts being printed as specimens.

XI. In cases where maps sent from abroad are of an inconvenient size or unsuitable in character, the Appellant shall, in agreement with the Respondent, prepare in England, from the materials sent from abroad, maps drawn properly to scale and of reasonable size, showing, as far as possible, the claims of the respective parties, in different colours.

SCHEDULE B.

Countries and places referred to in Rules 22, 29 and 34.

Australia, British Honduras, British North Borneo, Brunei, Ceylon, China, Eastern African Dependencies, Falkland Islands, Federated Malay States, Fiji, Hong Kong, India, Mauritius, New Zealand, Persia; Seychelles, Somaliland Protectorate, Straits Settlements.

SCHEDULE C.

I

FEES ALLOWED TO AGENTS CONDUCTING APPEALS OR OTHER MATTERS BEFORE THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

(33⅓ per cent. is added to these fees.)

	£	s.	d.
Retainer fee	0	13	4
Drawing Appearance or Caveat	0	5	0
Perusing printed Record, for every printed sheet of 8 pages	1	1	0
Perusing written Record, for every 25 folios	0	6	8
Drawing Index per folio	0	2	0
Drawing Marginal Notes and Headings per folio	0	0	6
Attending at the Registry to examine proof print of:			
Record with the certified Record per day	3	3	0
Record with the certified Record per half day	1	11	6
Correcting revised print of Record, per sheet of 8 pages:			
Foreign or Indian cases	1	1	0
Other cases	0	10	6
Instructions for Petition or Motion, or to Oppose	0	10	0

	£	s.	d.
Instructions for Petition of Appeal	0	10	0
Instructions for Case	1	0	0
Drawing Petition, Motion, Case or Affidavit per folio	0	2	0
Copying Petition, Motion, Case or Affidavit per folio	0	0	6
Correcting proof of Case, per sheet of 8 pages:			
Foreign or Indian cases	1	1	0
Other cases	0	10	6
Drawing and fair copy Case Notice	0	10	0
Perusing Petition, Motion, or Affidavit per folio	0	2	0
Perusing Petition of Appeal	1	1	0
Perusing Case, per printed sheet of 8 pages	1	1	0
Instructions for and preparing Retainer to Counsel	0	10	0
Instructions to Counsel to argue an Appeal	1	0	0
Instructions to Counsel to argue a Petition or Motion	0	10	0
Instructions to Printer	0	10	0
Attending Consultation	1	0	0
Attending at the Council Chamber for the hearing of a Petition or Motion	1	6	8
Attending at the Council Chamber all day on an Appeal not called on	2	6	8
Attending the hearing of an Appeal per day	3	6	8
Approving Draft Order	0	10	0
Attendances generally	0	10	0
Attendances on Counsel where fee is 30 guineas or over	1	0	0
Drawing Bill of Costs per folio	0	1	0
Copying Bill of Costs per folio	0	0	6
Attending Taxation of Costs of an Appeal	2	2	0
Attending Taxation of Costs of a Petition or Motion	1	1	0
Sessions Fee for each year or part of a year from the date of Appearance (in Appeals only)	3	3	0
Letters, etc. (in Petitions)	1	1	0
Letters, etc., (in Appeals) for first year	2	2	0
Letters, etc., (in Appeals) for each following year	1	1	0

II

COUNCIL OFFICE FEES.

Entering Appearance	1	0	0
Amending Appearance	0	10	0
Examining proof print of Record with the certified record at the Registry (chargeable to Appellant only) —			
per day	2	0	0
per half day	1	0	0

	£	s.	d.
Lodging Petition of Appeal	3	0	0
Lodging Petition for special leave to appeal	2	0	0
Lodging any other Petition or Motion	1	0	0
Lodging Case or Notice under Rule 60	2	0	0
Setting down Appeal (chargeable to Appellant only)	5	0	0
Setting down Petition for special leave to appeal (chargeable to Petitioner only)	2	0	0
Setting down any other Petition (chargeable to Petitioner only)	1	0	0
Summons	1	0	0
Committee Report on Petition	2	0	0
Committee Report on Appeal	3	0	0
Original Order of His Majesty in Council determin- ing an Appeal	5	0	0
Any other original Order of His Majesty in Council	3	0	0
Plain copy of an Order of His Majesty in Council .	0	5	0
Original Order of the Judicial Committee	2	0	0
Plain copy of Committee Order	0	5	6
Lodging Affidavit	0	10	0
Certificate delivered to parties	0	10	0
Lodging Caveat	1	0	0
Subpœna to witnesses	0	10	0
Taxing Fee 6 <i>d.</i> for each pound allowed, or a fraction thereof, up to £300, and one per cent. beyond that sum, calculated at the rate of 5 <i>s.</i> for each £25, or a portion thereof.			

THE GOVERNMENT OF INDIA ACT.

CHAPTER I.

THE FEDERAL COURT.

200. (1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six. (2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years:

Provided that—

- (a) a judge may by resignation under his hand addressed to the Governor-General resign his office;
 - (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.
- (3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—
- (a) has been for at least five years a judge of a High Court in British India or in a Federated State; or
 - (b) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or
 - (c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession:

Provided that—

- (i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader; and
- (ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this sub-section to ten years there shall be substituted references to fifteen years.

In computing for the purposes of this sub-section the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person

has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

201. The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

202. If the office of Chief Justice of India becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may in his discretion appoint for the purpose.

203. The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

204. (1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the

Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

205. (1) Any appeal shall lie to the Federal Court from any judgment, decree or final order of a

High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

206. (1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

(a) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding sub-section, consequential provision may also be made by Act of

the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

207. (1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

208. An appeal may be brought to His Majesty in Council from a decision of the Federal Court—

- (a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administra-

tion in any State of a law of the Federal Legislature, without leave; and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council.

209. (1) The Federal Court shall, where it allows an appeal, remit the case to the court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought shall give effect to the decision of the Federal Court.

(2) Where the Federal Court upon any appeal makes any order as to the costs of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the court from which the appeal was brought and that court shall give effect to the order.

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose order a stay of execution in any case under appeal to the Court, pending the hearing of the appeal, and execution shall be stayed accordingly.

210. (1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.

(2) The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court, which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of British India or of any Federated State as if they

were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in part.

(3) Nothing in this section—

(a) shall apply to any such order with respect to costs as is mentioned in sub-section (2) of the last preceding section; or

(b) shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.

211. Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

212. The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

213. (1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his

discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

214. (1) The Federal Court may from time to time, with the approval of the Governor-General in his discretion, make rules of court for regulating generally the practice and procedure of the court, including rules as to the persons practising before the court, as to the time within which appeals to the court are to be entered, as to the costs of and incidental to any proceedings in the court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges:

Provided that, if the Federal Legislature makes such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the court, the rules shall provide for the constitution of a special division of the court for the purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged.

(3) Subject to the provisions of any rules of court, the Chief Justice of India shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose.

(4) No judgment shall be delivered by the Federal Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

(5) All proceedings in the Federal Court shall be in the English language.

215. The Federal Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Act.

216. (1) The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the Federation, and any fees or other moneys taken by the court shall form part of those revenues.

(2) The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

217. References in any provision of this Part of this Act to a High Court in a Federated State shall be construed as references to any court which His Majesty may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision.

218. Nothing in this chapter shall be construed as conferring, or empowering the Federal Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court in British India is exercising jurisdiction on appeal from a court outside British India, or as affecting any right of appeal in

any such case to His Majesty in Council with or without leave.

CHAPTER II.

THE HIGH COURTS IN BRITISH INDIA.

219. (1) The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore, and Patna, the Chief Court of Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind, any other court in British India constituted or reconstituted under this chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act:

Provided that, if provision has been made before the commencement of Part III of this Act for the establishment of a High Court to replace any court or courts mentioned in this sub-section, then as from the establishment of the new court this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.

(2) The provisions of this chapter shall apply to every High Court in British India.

220. (1) Every High Court shall be a court of record and shall consist of a chief justice and such other judges as His Majesty may from time to time deem it necessary to appoint:

Provided that the judges so appointed together with any additional judges appointed by the Governor-General in accordance with the following provisions of this chapter shall at no time exceed in number such maximum number as His Majesty in Council may fix in relation to that court.

(2) Every judge of a High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty years:

Provided that—

- (a) a judge may by resignation under his hand addressed to the Governor resign his office;
- (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of a High Court unless he—

- (a) is a barrister of England or Northern Ireland, of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or
- (b) is a member of the Indian Civil Service of at least ten years standing, who has for at least three years served as, or exercised the powers of, a district judge; or
- (c) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court; or
- (d) has for at least ten years been a pleader of any High Court or of two or more such Courts in succession:

Provided that a person shall not, unless he is, or when first appointed to judicial office was a barrister, a member of the Faculty of Advocates or a pleader, be qualified for appointment as Chief Justice of any High Court constituted by letters patent until he has

served for not less than three years as a judge of a High Court.

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

221. The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment.

222. (1) If the office of chief justice of a High Court becomes vacant, or if any such chief justice is by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the chief justice has resumed his duties, as the case may be, be performed by such one of the other judges of the courts as the Governor-General may in his discretion think fit to appoint for the purpose.

(2) If the office of any other judge of a High Court becomes vacant, or if any such judge is ap-

pointed to act temporarily as a chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor-General may in his discretion appoint a person duly qualified for appointment as a judge to act as a judge of that court, and the person so appointed shall, unless the Governor-General in his discretion thinks fit to revoke his appointment, be deemed to be a judge of that court until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties.

(3) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court it appears to the Governor-General that the number of the judges of the court should be for the time being increased, the Governor-General in his discretion may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

223. Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the Court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act.

224. (1) Every High Court shall have superintendence over all courts in India for the time being

subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

- (a) call for returns;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

225. (1) If on an application made in accordance with the provisions of this section a High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.

(2) An application for the purposes of this section shall not be made except, in relation to a Federal Act, by the Advocate-General for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province.

226. (1) Until otherwise provided by Act of the appropriate legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning and act ordered or done in

the collection thereof according to the usage and practice of the country or the law for the being in force.

(2) A Bill or amendment for making such provision as aforesaid shall not be introduced into or moved in a Chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion or, as the case may be, or the Governor in his discretion.

227. All proceedings in every High Court shall be in the English language.

228. (1) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court shall be charged upon the revenues of the Province, and any fees or other moneys taken by the court shall form part of those revenues.

(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.

229. (1) His Majesty, if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty, may by letters patent constitute a High Court for that Province or any part thereof or reconstitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those courts.

(2) Where any Court is reconstituted, or two Courts are amalgamated, as aforesaid, the letters patent shall provide for the continuance in their respective offices of the existing judges, officers and servants of the Court or Courts, and for the carrying on before the reconstituted Court or the new Court of all pending matters, and may contain such other

provisions as may appear to His Majesty to be necessary by reason of the reconstitution or amalgamation.

230. (1) His Majesty in Council may, if satisfied that an agreement in that behalf has been made between the Governments concerned, extend the jurisdiction of a High Court in any Province to any area in British India not forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other area in relation to which it exercises jurisdiction.

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the commencement of Part III of this Act empowering any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of any Province.

(3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Act shall be construed—

- (a) as empowering the Legislature of the Province in which the Court has its principal seat to increase, restrict or abolish that jurisdiction; or
- (b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

231. (1) Any judge appointed before the commencement of Part III of this Act to any High Court shall continue in office and shall be deemed to have been appointed under this Part of this Act, but shall not by virtue of this Act be required to relin-

quish his office at any earlier age than he would have been required so to do, if this Act had not been passed.

(2) Where a High Court exercises jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of a Province, references in this chapter to the Governor in relation to the judges and expenses of a High Court and references to the revenues of the Province shall be construed as references to the Governor and the revenues of the Province in which the Court has its principal seat, and the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor of the Province in which the subordinate court is situate, or, if it is situate in an area not forming part of a Province, by the Governor-General.

RULES OF THE FEDERAL COURT.

The Federal Court, in pursuance of the powers conferred on it by Section 214 of the Government of India Act, 1935, and of all other powers enabling it in that behalf, with the approval of the Governor-General, hereby makes the following Rules:—

ORDER I.

INTERPRETATION, ETC.

1. These Rules may be cited as the Federal Court Rules, and shall come into force as soon as they are notified in the *Gazette of India*.

2. In these Rules, unless the context otherwise requires—

“Act” means the Government of India Act, 1935;

“Advocate” means a person entitled to appear and plead before the Federal Court;

“Agent” means an Agent admitted and enrolled under these Rules;

“Chief Justice” means the Chief Justice of India;

“Code” means the Civil Procedure Code, 1908, as amended or modified by any Order in Council or by or under any Central Act;

“Court” means the Federal Court;

“decree” and “order” have the same meanings as in the Code;

“Judge” means a Judge of the Court;

“judgment” means the statement given by the Court or a Judge of the grounds of a decree or order;

“month” means a calendar month;

“party” and all words descriptive of parties to proceedings before the Court (as “appellant,” “respondent,” “plaintiff,” “defendant” and the like) include, in respect of all acts proper to be done by an Agent, the Agent of the party in question, when he is represented by an Agent;

“prescribed” means prescribed by rules of the Court;

“Province” includes a Chief Commissioner’s Province;

“record” in Part II of these Rules means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before the Court at the hearing of the appeal;

“Registrar” and “Registry” mean respectively the Registrar and Registry of the Court;

“respondent” includes an intervener;

“signed” has the same meaning as in the Code.

3. Where by these Rules or by any order of the Court any step is required to be taken in connection with any cause, matter or appeal before the Court, that step shall, unless the context otherwise requires, be taken in the Registry.

4. Where any particular number of days is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a day on which the offices of the Court are closed, in which case the time shall be reckoned exclusively of that day also and of any succeeding day or days on which the offices of the Court continue to be closed.

5. None of the provisions of the Code shall apply to any proceedings in the Court unless expressly incorporated in these Rules.

ORDER II.

DOCUMENTS.

1. The officers of the Court shall not receive any pleading, petition, affidavit or other document, except original exhibits and certified copies of public documents, unless it is fairly and legibly transcribed on one side of Government water-marked paper, fools-cap size, and all office copies shall be transcribed in like manner.

2. No document in a language other than English shall be accepted for the purpose of any proceedings before the Court, unless translated in accordance with these Rules.

3. Every document required to be translated shall be translated by a translator nominated or approved by the Court.

4. Every translator shall, before acting, make an oath or affirmation that he will translate correctly and accurately all documents given to him for translation.

ORDER III.

AFFIDAVITS.

1. Every affidavit shall be intituled in the cause, matter or appeal in which it is sworn.

2. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs to be numbered consecutively, and shall state the description, occupation, if any, and the true place of abode of the deponent.

3. The costs occasioned by any unnecessary prolixity in the title to an affidavit or otherwise shall be disallowed by the Taxing Officer.

4. An affidavit requiring interpretation to the deponent shall be interpreted by an interpreter nominated or approved by the Court, if made within the

Province of Delhi, and if made elsewhere shall be interpreted by a competent person who shall himself make affidavit that he is a competent person and that he has correctly interpreted the affidavit to the deponent.

5. Affidavits for the purposes of any cause, matter or appeal before the Court may be sworn before any Court or officer mentioned in Section 139 of the Code, or before a commissioner generally or specially authorised in that behalf by the Chief Justice.

6. Where the deponent is a purdahnashin lady she shall be identified by a person to whom she is known and that person shall prove the identification by a separate affidavit.

7. Every exhibit annexed to an affidavit shall be marked with the title and number of the cause, matter or appeal and shall be initialled and dated by the commissioner, court or officer before whom it is sworn.

8. No affidavit having interlineation, alteration or erasure shall be filed in Court unless the interlineation or alteration is initialled, or unless in the case of an erasure the words or figures written on the erasure are rewritten in the margin and initialled, by the commissioner or officer before whom the affidavit is sworn.

9. The Registrar may refuse to receive an affidavit where in his opinion the interlineations, alterations or erasures are so numerous as to make it expedient that the affidavit should be rewritten.

10. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used except by leave of the Court.

11. In this Order "affidavit" includes a petition or other document required to be sworn and "sworn" shall include "affirmed."

ORDER IV.

INSPECTIONS, SEARCHES, ETC.

1. Subject to the provisions of these Rules, a party to any cause, matter or appeal who has entered an appearance shall be allowed to search, inspect or get copies of all pleadings and other documents or records in the case, on payment of the prescribed fees and charges.

2. The Court, at the request of a person not a party to the cause, matter or appeal, may on good cause shown allow such search or inspection or grant such copies as is or are mentioned in the last preceding Rule, on payment of the prescribed fees and charges.

3. A search or inspection under the last two preceding Rules during the pendency of a cause, matter or appeal, shall be allowed only in the presence, or with the consent, of the parties thereto who have entered an appearance, or after twenty-four hours' notice in writing to them, and copies of documents shall not be allowed to be taken, but notes of the search or inspection may be made.

4. Copies required under any of the preceding Rules of this Order may be certified as correct copies by any officer of the Court authorised in that behalf by the Registrar.

5. No record or document filed in any cause, matter or appeal shall, without the leave of the Court, be taken out of the custody of the Court.

ORDER V.

OFFICES OF THE COURT: SITTINGS AND VACATION, ETC.

1. The offices of the Court, except in vacation and on Saturdays and holidays, shall, subject to any order by the Chief Justice, be open daily from 10-30 A.M. to

4-30 P.M. but no work, unless of an urgent nature, shall be admitted after 4 P.M.

2. The offices of the Court shall be open on Saturdays from 10-30 A.M. to 1-30 P.M. but no work, unless of an urgent nature, shall be admitted after 12 noon.

3. The offices of the Court shall be open in vacation from 10-30 A.M. to 1-30 P.M. except on Saturdays and holidays, but no work unless of an urgent nature shall be received after 12 noon.

4. The Registrar shall not be absent from the Court without the leave of the Chief Justice, nor any other officer of the Court without the leave of the Registrar, but this Rule shall not apply to Sundays and holidays.

5. The Court shall hold one term annually commencing on the first Tuesday in October in each year, or, if that day is a Court holiday, then on the next working day, and continuing to the commencement of the long vacation in the year's next following, and shall sit in Delhi and at such other place or places, if any, as may from time to time be notified in the Gazette of India.

6. The long vacation of the Court shall commence on such date as may be fixed in each year by the Chief Justice and notified in the Gazette of India.

7. The Court shall not ordinarily sit on Saturdays, nor on the following days, that is to say, December 24th to January 6th, both days inclusive, Good Friday to Easter Monday, both days inclusive, and on any other days notified as Court holidays in the Gazette of India.

8. A Judge shall be appointed by the Chief Justice before the commencement of each long vacation for the hearing of all matters which may require to be immediately or promptly dealt with.

ORDER VI.

OFFICERS OF THE COURT, ETC.

1. The Registrar shall have the custody of the records of the Court and shall exercise such other functions as are assigned to him by these Rules.

2. Any person appointed by the Chief Justice to be acting Registrar during the absence of the Registrar may exercise all the functions assigned to the Registrar by these Rules, and accordingly any references in these Rules to the Registrar shall include references to an acting Registrar.

3. The Chief Justice may assign, and the Registrar may with the approval of the Chief Justice delegate, to a Deputy Registrar or Assistant Registrar any functions required by these Rules to be exercised by the Registrar.

4. The Registrar shall, subject to any general or special directions given by the Chief Justice, allocate the duties of the Registry among the officers of the Court, and shall, subject to these Rules and to any such directions as aforesaid, supervise and control the officers and servants of the Court.

5. The official Seal to be used in the Court shall be such as the Chief Justice may from time to time direct, and shall be kept in the custody of the Registrar.

6. Subject to any general or special directions given by the Chief Justice, the Seal of the Court shall not be affixed to any writ, rule, order summons or other process saved under the authority in writing of the Registrar.

7. The Seal of the Court shall not be affixed to any certified copy issued by the Court save under the authority of the Registrar or of a Deputy Registrar or Assistant Registrar if authorised in that behalf in writing by the Registrar.

8. The Registrar shall keep a list of all cases pending before the Court and shall, subject to these Rules and to any general or special directions given by the Chief Justice, prepare the list of cases ready for hearing and shall cause public notice to be given thereof and of the day, if any, assigned for the hearing of any case or cases in the list.

ORDER VII.

ADVOCATES AND AGENTS.

1. A person qualified as hereinafter mentioned may apply to be enrolled as an Advocate in the Court and if his application is granted shall, on payment of the prescribed fee, be entitled to be so enrolled and to appear and plead before the Court.

2. The Roll of Advocates shall be in two parts, one containing the names of Senior Advocates and the other the names of other Advocates.

3. A Senior Advocate shall have precedence over other advocates who are not Senior Advocates, and the provisions of the First Schedule to these rules shall apply with respect to Senior and other Advocates.

4. A person shall not be entitled to be enrolled as an Advocate unless he is, and has been for not less than ten years in the case of a Senior Advocate or five years in case of any other Advocate, enrolled as an advocate in the High Court of a Province.

5. A person who in the case of an appeal before the Court has appeared as counsel, advocate or vakil in that case in the Court from which the appeal is brought shall be entitled to appear and plead in the appeal, notwithstanding that he has not been enrolled as an Advocate in the Court.

6. The Chief Justice may, if for any special reason he thinks it desirable so to do, permit any other person who is in his opinion sufficiently qualified to appear as an Advocate in a particular case.

7. No person shall appear as Advocate in any case, unless he is instructed by an Agent.

8. The Roll of Advocates shall be kept by the Registrar and shall contain such particulars as the Court may from time to time require.

9. All Advocates appearing before the Court shall wear such robes and costume as may from time to time be directed by the Chief Justice.

10. The enrolment fee for Senior Advocates shall be Rs. 500 and for other Advocates Rs. 250.

11. The Advocate-General of India shall have precedence over all other Advocates in the Court.

12. The Advocate-General of Bengal, Madras, Bombay, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, North-West Frontier Province, Orissa and Sind shall in that order have precedence immediately after the Advocate-General of India.

13. An Advocate-General shall by virtue of his office have the status and precedence of a Senior Advocate in the Federal Court, notwithstanding that his name is not in the list of Senior Advocates.

14. Subject to the preceding rules of this Order, an Advocate appearing before the Court shall have precedence among the Senior or other Advocates, as the case may be, according to the date of his enrolment as a Senior or other Advocate, as the case may be, in the Court:

Provided that an Advocate enrolled before December 31st, 1938, shall have precedence among the Senior or other Advocates, as the case may be, according to the date of his enrolment in his own High Court.

Any question which arises with respect to the precedence of any Advocate shall be determined by the Federal Court.

15. A person may apply to be admitted and enrolled as an Agent in the Court if he is entitled to be

admitted to practice as an attorney or solicitor in any High Court or if, subject to the next succeeding Rule, he is entitled to appear and plead in a High Court, and if the application is granted shall on payment of the prescribed fee be entitled to be so enrolled.

16. An Agent shall before enrolment subscribe before the Registrar a declaration, in such form as the Chief Justice may from time to time direct, undertaking to observe the rules, regulations, orders and practice of the Court, to pay all fee or charges due and payable in any cause, matter or appeal in the Court, and not, so long as his name remains on the Roll of Agents, to appear or plead before any High Court.

17. The enrolment fee for an Agent shall be Re. 100.

18. Every Agent shall have an office in the Province of Delhi and shall notify the Registrar of the address of his office and of any change of address, and any notice, writ, summons or other document served on the Agent at the address notified by him shall be deemed to have been properly served.

19. An Agent who wishes to have his name removed from the Roll of Agents shall, apply by petition, verified by affidavit, entitled "In the matter of _____, an Agent in this Court", and stating the date of his enrolment as an Agent, the reason why he wishes his name to be removed, that no application or other proceeding in any Court is pending against him or is anticipated by him, and that no fees are owing to the Court for which he is personally responsible.

20. Every Agent shall before acting on behalf of any person or party file in the Registry the power or warrant of attorney authorizing him to act.

21. No person having an Agent on the record shall file a power or warrant of attorney authorising another Agent to act for him in the same case save

with the consent of the former Agent or by leave of a Judge, unless the former Agent is dead, or is unable by reason of infirmity of mind or body to continue to act.

22. No Agent may, without the leave of the Court, withdraw from the conduct of any case by reason only of the non-payment of costs by his client.

23. No person having an Agent on the record shall be heard in person save by special leave of the Court.

24. No Agent shall authorise any person whatsoever, except another Agent, to practise or do any act whatsoever in his name in any case.

25. Where a party changes his Agent, the new Agent shall give notice of the change to all other parties appearing.

26. No Advocate shall act as Agent nor Agent as Advocate in any circumstances whatsoever.

27. Where on the complaint of any person or otherwise, the Court is of opinion that an Advocate has been guilty of misconduct or of conduct unbecoming an Advocate, the Court may suspend him from practising before the Court either permanently or for such period as the Court may think fit, and shall report his name to his own High Court.

28. Where on the complaint of any person or otherwise, the Court is of opinion that an Agent has been guilty of misconduct or has committed a breach of the understanding subscribed by him, the Court may suspend him from practising before the Court for such period as the Court may determine, or may direct his name to be struck off the roll of Agents and shall report his name to the High Court or other authority, if any, to which he is subject.

29. For the purpose of the last two preceding Rules the Court shall in the first instance direct a summons to issue returnable before the Court or before

a Special Bench to be constituted by the Chief Justice, requiring the Advocate or Agent, as the case may be, to show cause against the matter alleged in the summons, and the summons shall, if possible, be served personally upon him with copies of any affidavit or statement before the Court at the time of the issue of the summons.

ORDER VIII..

BUSINESS IN CHAMBERS.

1. The powers of the Court in relation to the following matters may be exercised by the Registrar:—

- (1) Application for revivor or substitution.
- (2) Application for leave to appeal or defend as pauper.
- (3) Applications for discovery and inspection.
- (4) Applications for delivery of Interrogatories.
- (5) Certifying of cases as fit for employment of advocate.
- (6) Applications for substituted service.
- (7) Application for time to plead, for production of documents and generally relating to conduct of cause, appeal or matter.

2. The powers of the Court in relation to the following matters may be exercised by a single Judge sitting in Chambers but subject to reconsideration, at the instance of any aggrieved party, by a bench of three Judges, which may include the Judge who dealt with the matter:—

- (1) Approval of Special Translator.
- (2) Approval of Special Interpreter.
- (3) Applications for production of documents outside Court premises.
- (4) Applications for change of Agent.
- (5) Applications by Agents for leave to withdraw.

- (6) Applications for leave to compromise or discontinue pauper appeals.
- (7) Applications for striking out or adding party.
- (8) Applications for separate trials of causes of action.
- (9) Applications for separate trials to avoid embarrassment.
- (10) Rejection of plaint.
- (11) Applications for setting down for judgment in default of written statement.
- (12) Applications for better statement of claim or defence.
- (13) Applications for particulars.
- (14) Applications for striking any matter in a pleading.
- (15) Applications for amendment of pleading.
- (16) Applications for enlargement of time to amend.
- (17) Applications to withdraw suits.
- (18) Applications for payment into Court.
- (19) Applications for payment out of Court of money or security.
- (20) Applications for payment out of Court of interest or dividend on securities.
- (21) Applications to tax bills returned by Registrar.
- (22) Applications for costs of taxation when one-sixth is taxed off.
- (23) Applications for review of taxation by Court.
- (24) Applications for enlargement or abridgement of time.
- (25) Applications for issue of commission to examine witnesses.
- (26) Applications for security for costs.
- (27) Applications for assignment of Security Bonds.

- (28) Applications for enforcing payment of costs under directions of Registrar.
- (29) Applications for extending returnable dates of warrants.
- (30) Applications for order against clients for payment of costs.
- (31) Applications by outsiders for return of exhibits.
- (32) Applications for transmission of original documents to Privy Council.
- (33) Applications for taxation and delivery of bills of costs.
- (34) Applications under Section 131 (4) of the Act.

3. An appeal shall lie from the Registrar in all cases to the Judge in Chambers.

4. The Registrar may, and if so directed by the Judge in Chambers shall, at any time, adjourn any matter to the Judge in Chambers, and the Judge in Chambers may at any time adjourn any matter into Court, and the Court may direct that any matter shall be transferred from the Registrar or the Judge in Chambers to the Court.

ORDER IX.

CIVIL APPEALS.

1. Where a certificate has been given under section 205 (1) of the Act, the provisions of Order XLV of the Code, as modified and adapted by the Government of India (Adaptation of Indian Laws) Order, 1937, shall apply in relation to appeals to the Federal Court.

2. Subject to the provisions of sections 4 and 12 of the Indian Limitation Act, 1908, applications under Rule 2 of the said Order XLV shall be presented within ninety days from the date of the signing of the decree or order appealed from.

ORDER X.

PROCEEDINGS AFTER ADMISSION OF APPEAL.

1. After the grant of a certificate by a High Court that a case involves a substantial question of law as to the interpretation of the Act or any Order in Council made thereunder, an appellant shall, subject to the provisions of the Code and of any rules made by the High Court relating to appeals to the Federal Court, without delay take all necessary steps to have the record prepared in the High Court and transmitted to the Registrar of the Federal Court.

2. The record so prepared shall be printed in such manner as may from time to time be directed by the Federal Court.

3. Within sixty days of the admission of the appeal by the High Court appealed from, the appellant shall lodge in the Federal Court his petition of appeal, which shall contain a concise statement of the facts of the case, on the grounds of appeal, and of the arguments and authorities upon which he proposed to rely at the hearing; and the Registrar shall thereupon send a copy of the petition to that High Court for service upon the respondent or, if the respondent has already entered an appearance, serve a copy upon the respondent.

4. An appellant may withdraw his appeal—

(a) at any time before the respondent has entered an appearance, by written notice to the Registrar of the Federal Court; and

(b) at any time after the respondent has entered an appearance, by petition to the Federal Court and upon such terms as to costs as the Court may think fit to impose.

5. Any respondent may file in the Registry, not less than fourteen days before the date appointed for hearing, a concise statement of the facts of the case and of the arguments and authorities upon which he

proposes to rely at the hearing; but if he does not do so, he shall not be entitled to be heard by the Court except on the question of costs.

6. The Registrar shall send to the appellant a copy of any statement filed by the respondent.

7. Each party shall lodge or file in the Registry as many copies of his petition of appeal or his statement as the Registrar may direct.

8. A party to an appeal who appears in person shall furnish the Registrar with an address for service, and all documents left at that address, or where service may be affected by post addressed to that address, shall be deemed to have been duly served.

ORDER XI.

APPEARANCE.

1. A respondent may enter an appearance at any time between the admission and the hearing of the appeal, but if he delays unduly in entering an appearance he shall bear, or be disallowed the costs occasioned by his delay, unless the Court otherwise orders.

2. A respondent may, after entering appearance, apply for the summary determination of an appeal on the ground that it is frivolous or vexatious or brought for the purpose of delay and the Court shall make such order thereon as it may think fit.

3. Two or more respondents may at their own risk as to costs enter separate appearances in the same appeal.

4. A respondent who has not entered an appearance shall not be entitled to receive any notices relating to the appeal from the Registrar.

5. Where a respondent fails to enter an appearance, the appeal may be set down *ex parte* as against him at any time after the expiration of sixty days from the lodging of the petition of appeal.

6. If a non-appearing respondent has been made a respondent by an order of the Federal Court after the admission of the appeal, the appeal may be set down *ex parte* as against him at any time after the expiration of ninety days from the date on which he was served with a copy of the order of the Court making him a respondent.

ORDER XII.

HEARING OF APPEALS.

1. As soon as may be after a petition of appeal has been lodged, the Registrar shall, after communicating with the parties, fix a day for the hearing of the appeal, due regard being had to the current business of the Court, to the time necessary for the service of the petition of appeal on the respondent, and any other relevant circumstances.

2. Subject to the last preceding Rule, all appeals filed in the Registry shall be heard in the order in which they are set down.

3. The Registrar shall, subject to the provisions of rule 4 of the Order XI of these Rules, notify the parties to the appeal of the day fixed for the hearing.

4. Subject to the directions of the Court, at the hearing of an appeal not more than two Advocates shall be heard on a side.

5. The appellant shall not, without the leave of the Court, rely at the hearing on any grounds not specified in his petition of appeal.

6. Where the Court, after hearing an appeal, decides to reserve its judgment therein, the Registrar shall in due course place the appeal in the daily list of the day appointed by the Court for the delivery of the judgment.

7. A respondent may within the time limited for appearance deliver to the Registrar and to the appellant a notice in writing consenting to the appeal, and

the Court may thereupon, if it thinks fit, make an order upon the appeal without requiring the attendance of the person so consenting.

ORDER XIII.

FAILURE TO PROSECUTE APPEAL, ETC.

1. If an appellant fails to take any step in an appeal within the time specified by these Rules, or, if no time is specified, it appears to the Registrar that the appellant is not prosecuting his appeal with due diligence, the Registrar shall call upon him to explain his default, and, if no explanation or no explanation which appears to the Registrar to be sufficient is offered, may issue a summons calling upon him to show cause to the Court why the appeal should not be dismissed for want of prosecution.

2. The Registrar shall send a copy of the summons mentioned in the last preceding Rule to every respondent who has entered an appearance and every such respondent shall be entitled to be heard before the Court and to ask for his costs and other reliefs.

3. A petition for an order of revivor or substitution shall be filed in the Federal Court and shall be accompanied by a certificate or duly authenticated statement from the Court appealed from showing who in the opinion of that Court is the proper person to be substituted or entered on the record in place of, or in addition to, a party who has died, or undergone a change of status.

ORDER XIV.

PETITIONS FOR SPECIAL LEAVE TO APPEAL.

1. Where any person wishes to appeal to the Federal Court on a ground which in the circumstances of the case requires the leave of the Court under section 205 (2) of Act, he shall include a prayer for special leave to appeal in his petition of appeal.

2. A prayer for special leave to appeal shall be heard at the same time as the appeal.

ORDER XV.

PAUPER APPEALS.

1. Order XLIV in the First Schedule to the Code, and so much of Order XXXIII therein as is applicable, shall apply in the case of any person seeking to appeal to the Federal Court as a pauper, with the substitution of a notice of appeal, or a petition for special leave to appeal, for a memorandum of appeal, of the Advocate-General of India for the Government Pleader and of the Governor-General in Council for the Provincial Government.

2. The Court may allow an appeal to be continued in *forma pauperis* after it has been begun in the ordinary form.

3. An application for permission to proceed as a pauper shall be made on petition, setting out, concisely in separate paragraphs, the facts and relief prayed.

4. The Registrar shall, on satisfying himself that the provisions of Order XXXIII of the Code have been complied with, direct that the petition shall be filed and set down for investigation on a day to be fixed for the purpose.

5. Every decree in a pauper appeal shall contain an order for payment of Court fees mentioned in Rules 10 and 11 of Order XXXIII of the Code.

6. In every pauper appeal the Registrar shall, after the disposal thereof, send to the Governor-General in Council a memorandum of the Court fees due and payable by the pauper.

7. No person shall take, agree to take, or seek to obtain from a person proceeding as a pauper any fee, profit or reward for the conduct of the pauper's business in the Court, but the Court may neverthe-

less award costs against an adverse party and in that case may direct payment thereof to the Agent representing the pauper.

8. The preceding Rules of this Order shall apply, with the necessary modifications and adaptations in the case of any person seeking to defend an appeal to the Court as a pauper.

9. No appeal begun or carried on by a pauper appellant or respondent shall be compromised or discontinued without the leave of the Court.

ORDER XVI.

CRIMINAL APPEALS.

1. Where any High Court in British India makes any final order in the exercise of its criminal jurisdiction, whether original, appellate or revisional, and gives such a certificate as is mentioned in Section 205 of the Act, any party in the case may appeal to the Federal Court within thirty days from the date of the order.

2. The provisions of Sections 4 and 12 of the Indian Limitation Act, 1908, shall apply in relation to the said period of thirty days as they apply in relation to the periods of the limitation prescribed by that Act.

3. The appeal shall be in the form of a petition in writing, which shall be accompanied by a copy of the judgment and order appealed against.

4. The appellant, if he is in jail, may present his petition of appeal and the accompanying documents to the officer in charge of the jail, who shall forward them to the Federal Court.

5. On receipt of the petition, the Registrar shall cause notice to be given to the appellant and to the Advocate-General of India or of the Province concerned, as the case may require, of the date on which the appeal will be heard, and shall, on the application

of the said Advocate-General, furnish him with a copy of the grounds of appeal; and in cases where the appeal is by the Crown, the Registrar shall cause a like notice to be given to the accused.

6. The Registrar shall then send for the record of the case, if the record is not already in Court, and as soon as possible after the disposal of the appeal, he shall send a copy of the Court's judgment or order to the High Court concerned.

7. Pending the disposal of any appeal under these Rules, the Court may order that the execution of the sentence or order appealed against be stayed on such terms as the Court may think fit.

8. The preceding Orders in this Part of these Rules shall, with the necessary modifications and adaptations, apply to criminal appeals.

ORDER XVII.

PARTIES TO SUITS.

1. Two or more plaintiffs may join in one suit in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist.

2. Two or more defendants may be joined in one suit against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist.

3. Subject to the provisions of section 22 of the Indian Limitation Act, 1908, the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any plaintiff or defendant improperly joined be struck out, and that the name of any plaintiff or defendant who ought to have been joined, or whose presence before the Court may be necessary in order

to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

4. Where it appears to the Court that any causes of action joined in one suit cannot conveniently be tried or disposed of together the Court may order separate trials or make such other order as may be expedient.

5. Where it appears to the Court that any joinder of plaintiffs or defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such order as may be expedient.

ORDER XVII.

PLAINTS.

1. Every suit shall be instituted by the presentation of a plaint.

2. A plaint shall be presented to the Registrar, and all plaints shall be registered and numbered by him according to the order in which they are presented.

3. Every plaint shall comply with the rules contained in Order XXI of these Rules so far as they are applicable.

4. A plaint shall contain the following particulars:—

- (a) the names of the plaintiff and of the defendant;
- (b) the facts constituting the cause of action and when it arose;
- (c) the facts showing that the Court has jurisdiction;
- (d) the declaration which the plaintiff claims.

5. The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it and the Registrar shall sign the list if on examination he finds it to be correct.

6. The plaint shall be rejected:—

(a) where it does not disclose a cause of action;

(b) where the suit appears from the statement in the plaint to be barred by any law.

7. Where a plaint is rejected the Court shall record an order to that effect with the reasons for the order.

8. The rejection of the plaint shall not of itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

9. Where a plaintiff sues upon a document in his possession or power, he shall produce it to the Registrar when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

10. Where the plaintiff relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

11. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

12. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence at the hearing of the suit.

ORDER XIX.

ISSUE AND SERVICE OF SUMMONS.

1. When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim.

2. Every summons shall be signed by the Registrar, and shall be sealed with the Seal of the Court.

3. Every summons shall be accompanied by a copy of the plaint.

4. The summons shall be served by being sent by registered post to the Advocate-General of India or the Advocate-General for the Province, as the case may be, or to an Agent of the defendant empowered to accept service.

5. There shall be endorsed on every summons a notice requiring the defendant to enter an appearance within twenty-eight days after the summons has been served.

6. A defendant shall enter his appearance by filing in the Registry a memorandum in writing containing the name and place of business of his Agent, and in default of appearance being entered within the time mentioned in the summons, or as hereinafter provided, the suit may be heard *ex parte*.

7. The defendant shall forthwith give notice of his having entered an appearance to the plaintiff.

8. The plaintiff shall within fourteen days after the defendant has entered an appearance take out a summons for directions returnable before the Judge in Chambers and the Judge shall on the hearing of the summons give such directions with respect to pleadings (including a written statement by the defendant), interrogatories, the admission of documents and facts, the discovery, inspection and production of documents and such other interlocutory matters as he may think expedient.

ORDER XX.

WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM.

1. It shall not be sufficient for a defendant in his written statement to deny generally the facts alleged by the plaintiff but he shall deal specifically with each

allegation of fact of which he does not admit the truth, except damages.

2. Where a defendant denies an allegation of fact he shall not do so evasively but shall answer the point of substance.

3. Each allegation of fact in the plaint, if not denied specifically or by necessary implication, or not expressly stated to be not admitted in the pleading of the defendant, shall be taken to be admitted, but the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

4. Where the defendant claims to set-off against a demand by the plaintiff any ascertained sum of money, he may in his written statement, but not afterwards without the leave of the Court, state the grounds of his claim and the particulars of the debt sought to be set-off.

5. The written statement containing the particulars mentioned in the last preceding Rule shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off.

6. The rules relating to a written statement by a defendant shall apply to a written statement by a plaintiff in answer to a claim of set-off.

7. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court may think fit, but the Court may at any time require a written statement or additional written statement from any of the parties and may fix a time for presenting the same.

8. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such orders in relation to the suit as it thinks fit.

9. The defendant, in addition to his right of pleading a set-off, may set up by way of counter-claim against the claims of the plaintiff any right or claim in respect of a cause of action accruing to him either before or after the filing of the suit but before he has delivered his defence and before the time limited for delivering his defence has expired, whether that counter-claim sounds in damages or not, and the counter-claim shall have the same effect as a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the counter-claim.

10. The Court may, if in its opinion the counter-claim cannot be disposed of in the pending suit or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and require him to file a separate suit.

ORDER XXI.

PLEADINGS GENERALLY.

1. In this Order "pleading" means plaint or written statement.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts in which the party pleading relies, but not the evidence by which those facts are to be proved, nor any argumentative matter, and shall be divided into paragraphs numbered consecutively.

3. Dates, sums and numbers shall be expressed in figures, and if Indian dates are mentioned the corresponding English dates shall also be given.

4. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

5. Wherever the contents of any document are material, it shall be sufficient to state the effect thereof

as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

6. Every pleading shall be signed by, or by an Advocate on behalf of, the Advocate-General of India or by, or by an Advocate on behalf of, the Advocate-General for the Province, as the case may be.

7. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice or embarrass or delay the trial of the suit, or which contravenes any of the provisions of this Order.

8. The Court may at any stage of the proceedings allow either party to amend his pleadings in such manner and on such terms as may be just, but only such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

9. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within the fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time or of such fourteen days, as the case may be, unless the time is extended by the Court.

10. Amendments of pleadings made only for the purpose of rectifying a clerical error may be made on an order of the Registrar without notice, but unless otherwise ordered a copy of the order shall be served on all other parties.

ORDER XXII.

DISCOVERY AND INSPECTION.

1. Order XI of the First Schedule to the Code shall apply with respect to discovery and inspection.

in suits instituted before the Court, except Rules 5 and 23 of that Order.

2. Where the Court has made an order allowing one party to deliver interrogatories to the other, those interrogatories shall be answered by such persons as the Court may direct.

3. No application for leave to deliver interrogatories shall be made by the defendant until after he has filed his written statement.

4. After an order has been made for the delivery of interrogatories one set of the interrogatories, as allowed, shall be annexed and served with the order upon the person to be interrogated.

5. The Court may, for sufficient reason, allow any affidavit to be sworn, on behalf of the party from whom discovery, production or inspection is sought, by any person competent to make the same.

6. Where any document is ordered to be deposited in Court a copy of the order and a schedule of the document shall be left in the Registry at the time when the deposit is made.

7. When the purpose for which any documents have been deposited in Court is satisfied, the party by whom they were deposited may, pending the suit, have them delivered out to him, if he has the consent in writing of the other party, or an order of the Court.

ORDER XXIII.

ADMISSIONS.

Order XII in the First Schedule to the Code with respect to admissions shall apply.

ORDER XXIV.

SUMMONING AND ATTENDANCE OF WITNESSES.

1. The provisions of sections 28 and 32 of the Code shall apply to summonses to give evidence or to produce documents under these Rules.

2. Order XVI in the First Schedule to the Code with respect to the summoning and attendance of witnesses shall apply, with the exception of the proviso to sub-rule (3) of Rule 10, and the words “(a) within the local limits of the Court’s ordinary original jurisdiction, or (b) without such limits but” in Rule 19.

ORDER XXV.

ADJOURNMENTS.

Order XVII in the First Schedule to the Code with respect to adjournments shall apply, with the substitution in Rule 2 of the words “in such manner as it thinks just” for the words “in one of the modes directed in that behalf by Order IX, or make such other order as it thinks fit”.

ORDER XXVI.

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

1. Rules 1, 2, 3, 17 and 18 of Order XVIII in the First Schedule to the Code with respect to the hearing of suits and examination of witnesses shall apply.

2. Witnesses in attendance shall be examined orally in open Court and their evidence taken down in shorthand in the form of question and answer by such officers of the Court as may be appointed for the purpose.

3. The transcript of the shorthand note shall be signed by the officer recording the note and shall be deemed the deposition of the witness and shall form part of the record.

4. The party to any suit or matter in which the evidence has been taken in shorthand, and the witness whose evidence has been taken, shall be entitled upon

payment of the prescribed fee to be furnished with a certified copy of the transcript.

ORDER XXVII.

AFFIDAVITS.

Order XIX in the First Schedule to the Code with respect to affidavits shall apply.

ORDER XXVIII.

JUDGMENTS, DECREES AND ORDERS.

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their Agents, and the decree or order shall be drawn up in accordance therewith.

2. The Court may read a judgment signed by a member of the Court, but not read by him, before his death, retirement, resignation or departure on leave.

3. A judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.

4. Certified copies of the judgment, decree or order shall be furnished to the parties on application to the Court, and at their expense.

5. Every decree shall be drawn up in the Registry and be signed by the Registrar and by the presiding judge, or in his absence by the next senior judge and shall be sealed with the Seal of the Court and shall bear the same date as the judgment in the suit.

6. A decree shall specify clearly the declaration granted or other determination of the suit.

7. In every decree or order that is not final, liberty to apply shall be implied.

8. Every order of the Court shall be drawn up in the Registry and be signed by the Registrar.

9. Every order made by the Registrar or other officer shall be drawn up in the Registry and signed by the Registrar or other officer as the case may be.

10. Every order after being signed shall be sealed and filed.

11. No decree or order shall be drawn up until applied for by a party.

12. In cases of doubt or difficulty with regard to a decree or order made by the Court, the Registrar shall, before issuing the draft, submit the same to the Court.

13. Where a draft of any decree or order is required to be settled in the presence of the parties, the Registrar shall by notice in writing appoint a time for settling the same and the parties shall attend the appointment and produce their briefs and such other documents as may be necessary to enable the draft to be settled.

14. Where any party is dissatisfied with any decree or order as settled by the Registrar, the Registrar shall not proceed to complete the decree or order without allowing that party sufficient time to apply by motion to the Court.

ORDER XXIX.

WITHDRAWAL AND ADJUSTMENTS OF SUITS.

1. Rules 1, 2 and 3 of Order XXIII in the Schedule to the Code with respect to the withdrawal and adjustment of suits shall apply.

2. No new suit shall be brought in respect of the same subject-matter until the terms or conditions, if any, imposed by the order permitting the withdrawal of a previous suit or giving leave to bring a new suit have been complied with.

ORDER XXX.

PAYMENT INTO COURT.

Order XXIV in the First Schedule to the Code with respect to payment into Court shall apply.

ORDER XXXI.

SPECIAL CASE.

Rules 1, 3 and 5 of Order XXVI in the First Schedule to the Code with respect to procedure by way of Special Case shall apply, except the words "which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreements" in sub-rule (1) of Rule 3, the words "claiming to be interested as plaintiff or plaintiffs" to the end of sub-rule (2) of Rule 3; and the words "and upon the judgment so pronounced a decree shall follow" in sub-rule (2) of Rule 5.

ORDER XXXII.

APPEALS TO HIS MAJESTY IN COUNCIL.

Order XLV in the First Schedule to the Code shall apply with respect to appeals by leave of the Federal Court to His Majesty in Council, with the following exceptions and modifications:—

1. Rules 4 and 5 shall not apply.
2. In Rule 1 the words "any decision of the Federal Court" shall be substituted for the words "a final order."
3. In Rule 2 the words "Federal Court" shall be substituted for the words "Court whose decree is complained of."
4. The following shall be substituted for sub-rule (1) of Rule 3:—

"(1) Every petition shall state the grounds of appeal and pray for a certificate

that the case is a fit one for appeal to His Majesty in Council and that it does not fall within paragraph (a) of section 208 of the Act."

5. In paragraph (b) of sub-rule (1) of Rule 7, "Federal Court" shall be substituted for "High Court."
6. The following shall be substituted for Rule 13:—
 "The Court may on the grant of a certificate order or continue any stay of execution upon such terms and conditions as the Court thinks just."
7. In sub-rule (1) of Rule 15 the words "to the Federal Court" shall be substituted for the words "to the Court from which the appeal to His Majesty was preferred."

ORDER XXXIII.

SPECIAL REFERENCES UNDER SECTION 213 OF THE GOVERNMENT OF INDIA ACT, 1935.

1. On the receipt by the Registrar of the order of the Governor-General referring a question of law to the Court, the Registrar shall give notice to the Advocate-General of India to appear before the Court on a day specified in the notice to take the directions of the Court as to the parties who shall be served with notice of the Special Reference, and the Court may, if it considers it desirable order that notice of the Special Reference shall be served upon such parties as may be named in the order.

2. The notice shall require all such parties served therewith as desire to be heard at the hearing of the Special Reference to attend before the Registrar on the day fixed by the order to take the directions of the Court with respect to statement of facts and arguments and with respect to the date of the hearing.

3. Subject to the provisions of this Order, the procedure on a Special Reference shall follow as nearly as may be the procedure or proceedings before the Court in the exercise of its original jurisdiction, but with such variations as may appear to the Court to be appropriate and as the Court may direct.

4. After the hearing of the Special Reference, the Registrar shall transmit to the Governor-General the report of the Court thereon.

5. The Court may make such order as it thinks fit as to the costs of all parties served with notice under these Rules and appearing at the hearing of the Special Reference.

ORDER XXXIV.

COSTS.

1. Subject to any provisions of any statute or of these Rules, the costs of and incidental to all proceedings shall be in the discretion of the Court.

2. Where it appears that the hearing of any suit or matter cannot conveniently proceed by reason of the neglect of the Agent of any party to attend personally, or by some proper person on his behalf, or of his omission to deliver any paper necessary for the use of the Court which ought to have been delivered, the agent shall personally pay to all or any of the parties such costs as the Court may think fit to award.

ORDER XXXV.

TAXATION.

1. The Registrar shall be the Taxing Officer of the Court.

2. The Taxing Officer shall, in the absence of any specific provisions in these Rules, be guided by the rules and practice of the Supreme Court in England.

3. The Court may at any time determine the scale at which costs are to be taxed.

4. The Taxing Officer shall allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, and shall not allow any costs, charges and expenses which appear to him to have been incurred or increased unnecessarily or through negligence or mistake.

5. The Court may, in any proceedings where costs are awarded to any party, direct payment of a sum in gross in lieu of taxed costs, and may direct by and to whom that sum shall be paid.

6. Where in the opinion of the Taxing Officer the maximum fee allowed by these Rules is insufficient or a fee ought to be allowed for any matter not provided for in these Rules, he may refer the matter to the Court, and the Court may make such order thereon as to the allowance of the whole or any part of the amount proposed by the Taxing officer as it thinks fit.

7. Where the Taxing Officer is of opinion that any costs have been injuriously or unnecessarily occasioned by the negligence or improper conduct of any Agent, he shall not allow any charge for the same without the leave of the Court.

8. The Taxing Officer shall without delay bring to the notice of the Court any wrong charge which appears to him to have been wilfully made in any bill of costs.

9. In all cases of taxation as between party and party, the bill shall be lodged for taxation as between party and party and also as between Agent and client.

10. Every bill of costs lodged for taxation shall specify the exact number of folios contained in the bill lodged.

11. Every bill of costs shall be properly dated throughout and shall show in a column for the purpose the money paid out of pocket.

12. Every bill of costs shall be certified by the signature of the Agent from whose office it is issued.

13. The fees for taxation and registration of every bill of costs shall be paid in stamps when the bill is lodged for taxation.

14. Every bill of costs shall, wherever possible, be accompanied by vouchers, and every item of disbursement and the cause thereof shall be distinctly specified, and no payment out of pocket shall be allowed except on production of the necessary voucher, or in the case of Advocate's fees, without the signature of the Advocate that the fee has been paid.

15. Within three months from the date of the signing of the decree or order awarding costs or within such further time as the Taxing Officer may for good cause allow, the party to whom the costs have been awarded shall leave in the Registry an office copy of the decree or order, and shall lodge thereof the bill of costs and vouchers, and the Taxing Officer shall thereupon issue a summons fixing a date for the taxation.

16. Where within one month from the issue of the summons, no steps are taken by the party having the charge of the bill to serve the same the Taxing Officer may return the bill and vouchers, and shall not thereafter receive or tax the bill, except by order of the Court.

17. The Taxing Officer shall allow such costs of procuring the advice on evidence of an Advocate, and of employing an Advocate to settle pleadings and affidavits, as the Taxing Officer in his discretion thinks just and reasonable.

18. In cases of taxation as between Agent and client where the fees are payable by the client personally or out of a fund belonging entirely to him,

the Taxing Officer shall allow as fees to Advocates all sums actually paid, but not exceeding those set out in the Second Schedule to these Rules, unless the written consent of the client is produced.

19. Where an Agent acts for different parties to the same suit, appeal or matter, only one set of attendances shall be allowed, unless the Court otherwise orders.

20. Where on the taxation of a bill of costs payable out of a fund or out of the assets of a company in liquidation, the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part or more, no costs shall be allowed to the Agent lodging the bill for taxation for drawing or copying it, nor for attending the taxation.

21. Where on taxation of an Agent's bill of costs as between Agent and client, the amount of the bill is reduced by a sixth part or more, the Agent shall pay the costs of taxation including the costs of the Agent (if any) employed in contesting the bill and the same shall be deducted by the Taxing Officer; but the Taxing Officer may certify any special circumstances relating to the bill or taxation and the Court may upon application by the Agent whose bill has been taxed make any such order as the Court may think just and equitable with respect to the costs of the taxation.

22. The Agent for each party shall be personally responsible to the Court for the payment of the fees for transcribing the deposition of witnesses examined on behalf of his client and for filing exhibits put in.

23. In proceedings in *forma pauperis* no costs will be allowed to the pauper against the other party unless the Court otherwise orders.

24. No fees shall be payable by a pauper to his Advocate or Agent, nor shall any such fees be allowed on taxation of costs against the other party, unless by order of the Court.

25. No Court fees shall be payable by an applicant to proceed in *forma pauperis* except the fee for the petition to proceed.

26. In the taxation of costs as between party and party, the costs of and incidental to the attendance of an Advocate on summonses or other matters in Chambers shall not be allowed unless the Court certifies that it was a fit case for the employment of an Advocate.

27. An Agent who has furnished a copy of a document made for the purposes of a suit to the other party or his Agent on payment of half or other due proportion of the translation charges shall also be entitled to charge in his bill a fee of 6 annas per folio for such copy.

28. Unless specially allowed by the Taxing Officer, no allowance shall be made for any work done before commencement of proceedings in the Court, except for a letter before suit, and instruction to sue, appeal or defend.

29. In every case of taxation as between Agent and client, the client shall be duly summoned by the Taxing Officer to attend the taxation, unless the Taxing Officer shall see fit to dispense with his attendance.

30. No retaining fee to an Advocate shall be allowed on taxation as between party and party.

31. Where in any case it is necessary for an Agent to employ a legal practitioner beyond the limits of the Province of Delhi, the Taxing Officer may allow such sum for the costs of that practitioner and of instructing as the Taxing Officer may think reasonable.

32. Any party who is dissatisfied with the allowance or disallowance by the Taxing Officer of the whole or any part of the items in a bill of costs may apply to the Taxing Officer to review the taxation in respect thereof.

33. An application to review shall be made within a week from the date of the passing of the bill in the

'Taxing Office, and four days' notice thereof shall be given to the other party.

34. Objections in writing specifying concisely therein items or parts of the bill objected to and the grounds for the objections shall be served with the notice on the other party, and a copy thereof shall at the same time be carried in before the Taxing Officer.

35. The Taxing Officer may, where he thinks fit, issue, pending the consideration of any objections, a preliminary allocatur for or on account of the remainder of the bill of costs.

36. Upon application to review the Taxing Officer shall reconsider his taxation upon the objections carried in and may, where he thinks fit, receive further evidence in respect thereof, and shall state in a certificate the grounds of his decision thereon and any special facts or circumstances relating thereto.

37. Any party dissatisfied with the decision of the Taxing Officer may not later than seven days from the date of the decision, or within such further time as the Taxing Officer or the Court may allow, apply to the Court for an order to review the decision of the Taxing Officer and the Court may thereupon make such order as may seem just; but the taxation of the Taxing Officer shall be final and conclusive as to all matters which have not been objected to in manner aforesaid.

38. No evidence shall be received by the Court upon the review of the Taxing Officer's decision which was not before the Taxing Officer when he taxed the bill or reviewed his taxation, unless the Court otherwise directs.

39. Except as otherwise specially provided in these Rules, or by any law for the time being in force, the Court fees to be taken in all proceedings in the Federal Court shall be those set out in the Third Schedule to these Rules.

40. Except as otherwise specially provided in these Rules the fees set out in the Fourth Schedule to these Rules may be allowed to Agents and officers of the Court.

41. The allowances to be made to witnesses *per diem* shall be such as the Taxing Officer may think reasonable having regard to the profession or status of the witness.

42. Where the witness is a party to the suit or matter, he shall not be entitled to any allowance, except for travelling, unless he has been subpoenaed by another party to give evidence or the Court otherwise orders..

43. Witnesses residing more than five miles from the place where the Court sits shall be allowed travelling expenses according to the sums reasonably and actually paid by them and shall also be allowed such a sum for subsistence money and carriage hire as the Taxing Officer, having regard to the daily allowances fixed by the scale, considers reasonable.

44. Every person summoned to give evidence shall have tendered to him with the summons a reasonable sum for his travelling expenses (if any) and for the first day's attendance and shall, if obliged to attend for more than one day, be entitled before giving his evidence, to claim from the party by whom he has been summoned the appropriate allowances and expenses for each additional day that he may be required to attend.

45. Witnesses who have not been paid such reasonable sums for their expenses as the Court allows by its rules may apply to the Court at any time in person to enforce the payment of such sum as may be awarded to them.

46. For the purposes of this Order, a folio shall consist of ninety words; seven figures shall be counted as one word; and part of a folio shall be reckoned as a folio.

ORDER XXXVI.

NOTICE OF PROCEEDINGS TO ADVOCATE-GENERAL, ETC.

1. The Court may direct notice of any proceedings to be given to the Advocate-General of India or to the Advocate-General of any Province, and any Advocate-General to whom such notice is given may appear and take such part in the proceedings as he may be advised.

2. The Advocate-General of India and the Advocate-General of any Province may apply to be heard in any proceedings before the Court, and the Court may, if in its opinion the justice of the case so requires, permit any Advocate-General so applying to appear and be heard, subject to such terms as to costs or otherwise as the Court may think fit.

ORDER XXXVII.

POWER TO DISPENSE WITH REQUIREMENTS OF RULES,
ETC.

1. The Court may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matters of practice as it shall consider just and expedient.

2. An application to be excused from compliance with the requirements of any of the Rules shall be addressed in the first instance to the Registrar, who shall take the instructions of the Court thereon and communicate the same to the parties, but if in his opinion it is desirable that the application should be dealt with in open Court, he may direct the applicant to lodge it in the Registry, and to serve the other parties with a notice of motion returnable before the Court.

3. The Court may enlarge or abridge any time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any enlargement may be ordered,

although the application therefor is not made until after the expiration of the time appointed or allowed.

4. The Court may at any time, either of its own motion or on the application of any party, make such orders as may be necessary or reasonable in respect of any of the matters mentioned in rule 8 of Order XIX of these Rules, may issue summonses to persons whose attendance is required either to give evidence or to produce documents, or order any fact to be proved by affidavit.

ORDER XXXVIII.

FORMS TO BE USED.

1. Every writ, summons, order, warrant or other mandatory process shall run and be in the name of His Majesty the King, Emperor of India, and shall bear the attestation of the Chief Justice, and shall be signed by the Registrar with the day and the year of signing, and shall be sealed with the Seal of the Court.

2. The forms set out in the Fifth Schedule to these Rules, or forms substantially to the like effect with such variations as the circumstances of each case may require, shall be used in all cases where those forms are appropriate.

ORDER XXXIX.

PROVISIONS WITH RESPECT TO SERVICE OF DOCUMENTS.

1. Except where otherwise provided by Statute or prescribed by these Rules, all notices, orders or other documents required to be given to, or served on, any person shall be served in the manner provided by the Code for the service of a summons.

2. Service of any notice, order or other document on the Agent of any party may be effected by delivering it to the Agent or by leaving it with a clerk in his employ at his place of business.

3. Service of any notice, order or other document upon a person who resides at a place within British India between which place and Delhi there is communication by registered post, may, where so directed by the Court, be effected by posting a copy of the document required to be served in a prepaid envelope registered for acknowledgment, addressed to the party or person at the place where he ordinarily resides.

4. A document served by post shall be deemed to be served at the time at which it would be delivered in the ordinary course of post.

5. Unless the Court otherwise orders, the service of any notice, order or other document shall be proved by the production of a certificate by the Registrar that appearance has been entered, or, where no appearance has been entered, by evidence showing that the notice, order or other document was served in the manner provided by the Code.

6. Where the notice, order or other document has been served through another Court, the service may be proved by the deposition or affidavit of the serving officer made before the Court through which the service was effected.

7. Service effected after Court hours shall for the purpose of computing any period of time subsequent to that service be deemed to have been effected on the following day.

ORDER XL.

NOTICES OF MOTION.

1. Except where otherwise provided by Statute or prescribed by these Rules, all applications which in accordance with these Rules cannot be made in Chambers shall be made on motion after notice to the parties affected thereby, but the Court where satisfied that the delay caused by notice would or might entail serious mischief, may make any order *ex parte* upon such

terms as to costs or otherwise, and subject to such undertaking, if any, as the Court may think just, and any party affected by the order may move to have it set aside.

2. A notice of motion shall be intituled in the suit or matter in which the application is intended to be made and shall state the time and place of application and the nature of the order asked for and shall be addressed to the party or parties intended to be affected by it and their Agent or Agents, if any, and shall be signed by the Agent of the party moving, or by the party himself where he acts in person.

3. Save by the special leave of the Court, there shall be at least five days before service of motion and the day named for bringing on the motion.

4. The notice of motion, together with the affidavit or affidavits of service and the affidavit in support thereof shall be filed in the Registry immediately after service of notice, but not less than four days before the day named for bringing in the motion, and affidavits in answer or reply shall be filed in the Registry during office hours not later than 4 P.M. on the day preceding the day of the hearing.

5. Leave under the last preceding Rule to give short notice of motion may be obtained *ex parte* from the Court and the provisions in the last preceding Rule as to the filing of notice and motion and affidavit shall apply, save that they shall be filed not later than the next day after service of the motion.

6. Notice shall be given to the other party or parties of all grounds intended to be urged in support of, or in opposition to, any motion.

7. Save by leave of the Court, no affidavit in support of the application beyond those specified in the notice of motion, nor any affidavit in answer or reply filed later than the time prescribed in these Rules shall be used at the hearing or allowed on taxation.

8. Unless otherwise ordered the costs of a motion in a suit or proceeding shall be treated as costs in that suit or proceeding.

ORDER XLI.

COMMISSIONS TO TAKE EVIDENCE.

1. Order XXVI in the First Schedule to the Code with respect to commissions to examine witnesses shall apply except Rules 13, 14, 19, 20, 21 and 22.

2. An application for the issue of a commission may be by summons in Chambers to all parties who have appeared, or *ex parte* where there has been no appearance.

3. The commissioner shall, if the Advocate or other person examining a witness so desires record a question disallowed by the commissioner and the answer thereto, but the same shall not be admitted as evidence until the Court before whom the deposition is put in evidence shall so direct.

4. The Court may, when the commission is not one for examination on interrogatories, order that the commissioner shall have all the powers of a Court under Chapter X of the Indian Evidence Act to decide questions as to the admissibility of evidence, and to disallow any question put to a witness.

5. Unless otherwise ordered the party at whose instance the commission is ordered to issue, shall lodge in Court copies of the pleadings in the case within twenty-four hours of the making of the order and those copies shall be annexed to the commission when issued.

6. Any party aggrieved by the decision of the commissioner refusing to admit evidence or allow a question to be put may apply to the Court to set aside the decision and for direction to the commissioner to admit the evidence or to allow the question, but no such application shall be entertained if made later than

seven days after the examination of the witness has been closed.

7. After the deposition of any witness has been taken down and before it is signed by him, it shall be read over and, when necessary, translated to the witness, and shall be signed by him and left with the commissioner who shall subscribe his name and the date of the examination.

8. Commissions shall be made returnable within such time as the Court may direct.

ORDER XLII.

SECURITY FOR COSTS.

1. In any suit, appeal, or matter before the Court, the Court may at any stage require any party to furnish security for costs.

2. Where security is required to be furnished, it shall be given to the Registrar or to such other officer as the Court may specially direct, and the Court may permit or order him to assign the same to any other person for the purpose of suing thereon upon such terms as the Court may think fit.

3. Every person, other than a Guarantee Society, offering himself as a surety shall, where so required by the Registrar, produce his title deeds and vouchers and make an affidavit stating that he is worth the amount required.

4. A Guarantee Society, duly approved by the Court, may be accepted as surety upon its joining in a bond with the person ordered to give the security.

ORDER XLIII.

SAVING FOR INHERENT POWERS OF COURT.

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

FIRST SCHEDULE.

SENIOR AND OTHER ADVOCATES.

1. A Senior Advocate shall not appear or plead without a junior.

2. A Senior Advocate shall not accept instructions to draw pleadings, affidavits, advice on evidence or to do any drafting work of an analogous kind, but this prohibition shall not extend to settling any such matters as aforesaid in consultation with a junior.

3. An enrolled Advocate may, if otherwise qualified, apply to be enrolled in the list of Senior Advocates and any fee payable by him on enrolment shall be reduced by the amount of the fee paid by him on his original enrolment.

4. A Senior Advocate appearing with another Senior Advocate senior to himself shall be entitled to, and shall be paid, a fee not less than two-thirds of the fee marked on the brief of that other Advocate, and a junior appearing with a Senior Advocate or with any other Advocate senior to himself shall be entitled to, and shall be paid, a fee not less than one-third and not more than two-thirds of the fee marked on the brief of the Senior or other Advocate, but this rule shall not apply in the case of a second junior.

5. A Senior Advocate may announce that he will not accept any brief, or any brief of a specified class, without a special fee of a named amount, in addition to the ordinary fee marked on the brief, and shall not so long as that announcement is in force accept a brief without that special fee.

6. An Advocate appearing with a Senior Advocate whose brief is marked with a special fee in accordance with the last preceding rule shall only be entitled to his proper proportion of the ordinary fee marked on the Senior Advocate's brief and not to any proportion of the special fee.

7. In matters not specially provided for in this Schedule, the rules adopted by the English Bar, and in particular the rules applicable to the relation between King's Counsel and members of the junior Bar, shall so far as possible be applied to Senior and other Advocates respectively, and any disputes arising under this Schedule shall be referred to and determined by the Chief Justice.

SECOND SCHEDULE.

FEES TO ADVOCATES.

PART I.

		Fee on brief.	Refresher.
		Not exceeding	Not exceeding
Defended Appeals, Suits and References under Section 213.	Leading Advocate	60 G. Ms.	25 G. Ms.
	2nd Advocate	40 G. Ms.	20 G. Ms.
	3rd Advocate if allowed	20 G. Ms.	10 G. Ms.
	One Advocate	20 G. Ms.	
Undefended Appeals (that is where Respondent has not entered appearance or has not filed a statement of facts and arguments).	One Advocate	20 G. Ms.	
Opposed motions or investigations in Court.	Leading Advocate	10 G. Ms.	{ No refresher unless specially allowed by the Taxing Officer-
	2nd Advocate if allowed	7 G. Ms.	
Opposed applications or investigations in Chambers when certified.	One Advocate	10 G. Ms.	Do.
<i>Ex parte</i> motions or Chamber applications when certified.	One Advocate	5 G. Ms.	
Hearing judgment in suits, appeals or special references where judgment was reserved.	One Advocate	2 G. Ms.	
Examination of witness before Commissioner.	Leading Advocate	10 G. Ms.	7 G. Ms.
	2nd Advocate	7 G. Ms.	5 G. Ms.

PART II.

Drawing pleadings	5 G. Ms.
Settling pleadings	15 G. Ms.
Drawing or settling petitions of appeal	30 G. Ms.
Drawing or settling respondent's statement of facts and arguments	30 G. Ms.
Drawing or settling Special Case	10 G. Ms.
Drawing or settling affidavits or petitions not otherwise provided for	10 G. Ms.
Advice on evidence	10 G. Ms.
Consultations—	
Leading Advocate	5 G. Ms.
Second Advocate	3 G. Ms.
Conferences with Agents, if allowed	5 G. Ms.
General Retainer	5 G. Ms.
Special Retainer	2 G. Ms.

For the purposes of this Table a Gold Mohur shall be deemed to be the equivalent of Rs. 16.

THIRD SCHEDULE.

TABLE OF COURT FEES.

PART I.

ORIGINAL JURISDICTION.

	Rs.	A.	P.
1. Filing and registering plaint	50	0	0
2. Filing and registering written statement	25	0	0
3. Filing and registering written statement, pleading, set off or counter-claim	50	0	0
4. Reply to a counter-claim	25	0	0
5. For examining and comparing documents with the original, each	2	0	0
6. For reducing into writing or, where taken down in short- hand, transcribing the deposition of each witness for each folio	0	10	0
7. Every final decree where its value or amount does not exceed Rs. 10,000	50	0	0
Where it exceeds Rs. 10,000	80	0	0
8. Decree for the defendant	10	0	0
9. Decree for the defendant in suits in which set off is pleaded or counter-claim made and balance awarded to defendant, upon the amount of balance awarded. (Same as in decrees for plaintiff)			
10. Typed copies of transcript of depositions of witnesses for any party first copy per folio	0	3	0
Subsequent copies	0	1	0
11. Petition for admission of appeal to His Majesty in Council under Section 208 (a) of the Act	30	0	0
12. Every requisition to draw up an order admitting appeal to His Majesty in Council under Section 208 (a) of the Act, including fee for filing	15	0	0

PART II.

APPELLATE JURISDICTION.

1. Petition to proceed in <i>forma pauperis</i>	1	0	0
2. Lodging and registering appeal	40	0	0
3. Filing and registering concise statement of respondent	25	0	0
Where concise statement contains cross objections	35	0	0
4. Every decree for plaintiff on appeal in which lower court was in favour of defendant upon the value or amount of the decree as in suits			

Rs. A. P.

5. Every decree for plaintiff on appeal where the amount decreed in lower court is increased upon the amount of the increase as in suits
6. Decrees in other cases	50 0 0
7. Petition for leave to appeal to His Majesty in Council under Section 208 (b) of the Act	30 0 0
8. Every requisition to draw up an order granting or refusing leave to appeal to His Majesty in Council under Section 208 (b) of the Act	30 0 0
9. Every requisition to draw up an order declaring appeal to His Majesty in Council admitted, under Section 208 (b) of the Act, including fee for filing same and fee for certificate	30 0 0
10. Estimate of costs of preparing paper book (where necessary)	16 0 0
11. Settlement of index and list of paper book for every 16 papers or part of 16 papers)	1 0 0
12. Filing index and list of paper book per folio or part of folio	1 0 0
13. Copies to be made over to appellants' agent for paper book including examinations per folio	0 8 0
14. Examining and passing final or press proof for each proof per folio	0 2 0
15. Approving each marginal note	0 4 0
16. Certifying transcript or printed record for every eight pages or part thereof (for appeal to Privy Council)	1 0 0

PART III.

MISCELLANEOUS.

1. Admission of Agent	100 0 0
2. Entering in register of suits, appeals or matters, name of representatives of a deceased party or of a substituted or added party, per folio	1 0 0
3. Summons or notice to defendant or his representative or a respondent to a petition or to a memorandum of appeal, each	5 0 0
4. Entering appearance	2 0 0
5. Authority to Agent	3 0 0
6. Filing fee for every document for which a fee is not specially provided including documents annexed thereto as exhibits, if any, or produced with plaint or used in evidence, each document	3 0 0
7. Every application to the Court or a Judge by the Registrar not specially provided for	10 0 0
8. Every requisition to draw up an order including fee for filing the order	10 0 0
9. Filing judgment and decree of the Privy Council	3 0 0

	Rs.	A.	P.
10. Every warrant, writ, summons or other process not specially provided for	5	0	0
11. Every certificate or report of a Judge or of Registrar on an investigation	10	0	0
12. Every other certificate for which a fee is not specially provided	3	0	0
13. Commission to examine witnesses or other commission	10	0	0
14. For production before a Judge or Registrar the records of any suit, matter or appeal	5	0	0
15. Production by an officer of Court in any other Court or before a Commissioner of records of any suit, matter or appeal exclusive of travelling expenses	8	0	0
16. For production of records by post exclusive of postage, registration and insurance fees	5	0	0
17. For every attendance on parties or their agents inspecting books and papers in Court	5	0	0
18. For enquiry into sufficiency of security	8	0	0
19. For every search or examination of records	3	0	0
20. Every affidavit affirmed or sworn	1	0	0
21. For every oath or affirmation administered to witness	3	0	0
22. Each petition of review of judgment, decree or order including filing	15	0	0
23. Every exemplification of decree or other document in addition to the folio and other charges	15	0	0
24. Every requisition for duplicate or other copy of any document	1	0	0
25. For duplicate and other copies of any document per folio less requisition fee paid	0	10	0
26. For amending pleading or other proceedings under order of Court, per folio	2	0	0
27. Upon all moneys or securities paid to the Registrar or deposited with him, a commission of 1 per cent. and 2½ per cent. on interest drawn on invested money		
28. Every requisition for translation	1	0	0
29. Every written translation per folio less requisition fee paid	2	0	0
30. Every summons by Taxing Officer	3	0	0
31. Every certificate by Taxing Officer	2	0	0
32. Taxing each bill not exceeding 10 folios	10	0	0
33. For every other folio	1	0	0
34. Registering every bill of costs	1	0	0
35. Every special certificate of allowance where required	8	0	0
36. Every certificate on review of taxation	10	0	0
37. Entering and countersigning decree or order for payment of moneys in or out of Court	8	0	0
38. For making and entering every certificate to be annexed to such decree or order	15	0	0

Rs. A. P.

39. For every search where no certificate is required to be annexed to such decree or order	5	0	0
40. For every certificate of funds in Court	8	0	0

N.B.—In the case of Special References under Section 213 of the Act such of the above fees as may be appropriate shall be charged.

FOURTH SCHEDULE.

FEES TO AGENTS.

1. Drawing and engrossing authority to sue, appeal or defend	2	0	0
2. Receiving instructions for special affidavits or petitions (not to be allowed for affidavit made by agent or his clerk)	10	0	0
3. Drawing and engrossing affidavits, petitions and all other necessary documents (not specially provided for) exclusive of copies inserted therein up to 10 folios	8	0	0
Thereafter per folio	0	10	0
4. Drawing and engrossing Security Bond	8	0	0
5. Drawing and engrossing notice of motion and other necessary notices except notice to witnesses	8	0	0
6. Drawing and engrossing observation or instructions for advocate to accompany brief in interlocutory applications or for cross-examination of witness on commission Rs. 8 to	12	0	0
7. Drawing and engrossing particulars of claim set off or counter claim if required Rs. 4 to	10	0	0
8. (1) Preparing engrossment or fair copy of documents (not specially provided for) whether written or typed, first copy per folio	0	8	0
(2) Preparing carbon copies of above, if legible, per folio	0	4	0
(3) Preparing lithographed or photographed copies or printed copies, per folio	0	8	0
9. Serving every necessary notice, summons to a witness or other judicial process, which may be served by Agent, when within town of Delhi	2	0	0
When, outside Delhi (besides travelling expenses actually incurred) per day	8	0	0
10. Attendance on presentation of plaint	10	0	0
11. Receiving, filing or depositing any papers from or in the Registry	1	0	0
12. Attendance before Court or Judge or an officer of Court not otherwise provided for	5	0	0
13. Attending application for summons to witnesses or to parties	2	0	0
14. Attending every application to the Court or a judge in Chambers	12	0	0

		Rs.	A.	P.
15.	Attending every application to Registrar if contested .	12	0	0
	If uncontested	8	0	0
16.	Attendance on client or opposite party at the office of the Agent of either party where a letter would not suffice			
	Rs. 8 to	12	0	0
	Where a letter would suffice	4	0	0
17.	Receiving and perusing necessary letters	2	0	0
18.	Perusing document received from opposite party or obtained from Court, where necessary, in the discretion of the Taxing Officer up to	8	0	0
19.	Perusal and approval of draft orders or decrees	4	0	0
20.	Attending execution of Security Bond at the Agent's house or office or at the Court house	4	0	0
21.	Attending Court upon the swearing of every necessary affidavit (including attendance to have same explained)	1	0	0
22.	Attendances, if necessary, inspecting documents, books and accounts, by agent per hour	10	0	0
	Attendances, if necessary, inspecting documents, books and accounts, by clerk per hour	2	0	0
23.	Attending searches in Registry—			
	Common	2	0	0
	Special Rs. 4 to	10	0	0
23A.	Attending bespeaking, obtaining and filing copies of decrees or orders in the Registry	2	0	0
24.	Attending advocate, delivering brief with instructions	2	0	0
	Attending advocate, delivering additional briefs	1	0	0
25.	Attending advocate paying fee	2	0	0
26.	Attending advocate fixing time for consultation or conference	2	0	0
27.	Attendance when suit, appeal or matter or motion is on day's list for hearing—if not called on—per day	2	8	0
28.	Attending Court to hear judgment where judgment is reserved, if advocate is not briefed	20	0	0
	If advocate is briefed	10	0	0
29.	Attending taxation by Agent, personally per hour	4	0	0
	By Clerk per hour	2	0	0
30.	Attending Judge in Chambers or Registrar at hearing or enquiry or on review if taxation before Taxing Officer if advocate is not briefed, per hour	10	0	0
	Where advocate is briefed, per hour	5	0	0
31.	Attending on local enquiry or commission to examine witnesses within limits of Delhi town, where personal attendance of agent is required, per hour	12	0	0
	Where attendance by clerk is sufficient, per hour	2	0	0
	Within the limits of Delhi town an additional fee for going and returning and loss of time according to distance, from Rs. 3 to	8	0	0

		Rs.	A.	P.
	Outside the limits of Delhi town an additional fee for going and returning and loss of time for every mile, provided the total amount shall not exceed Rs. 80 per day and Rs. 125 per day and night	2	0	0
32.	Writing necessary letters	4	0	0
33.	Writing letters to witnesses for each witness	2	0	0
34.	Writing letter of instructions to local agent attending examination of witness on commission when agent cannot attend personally	10	0	0
35.	Necessary translations made at the office of agent, per folio	0	10	0
36.	Receiving instructions to sue, appeal or defend . Rs. 16 to	32	0	0
37.	Instructions to advocate to draw interrogatories . Rs. 20 to	50	0	0
38.	Instruction to advocate to draw interrogatories	8	0	0
39.	Instructions to advocate to draw a special case	10	0	0
40.	Drawing special case	16	0	0
41.	Drawing petition for admission of appeal to His Majesty in Council	25	0	0
42.	Drawing petition for leave to appeal to His Majesty in Council Rs. 25 to	40	0	0
43.	Drawing interrogatories	25	0	0
44.	Bill of costs in defended suits, appeals or matters	10	0	0
	In undefended suits, appeals or matters	5	0	0
45.	Conference with advocate	12	0	0
46.	Consultation with advocate	12	0	0
47.	Collecting and taking down evidence at the discretion of the Taxing Officer not exceeding	00	0	0
48.	Attendance at hearing of suits, appeals or matters if contested, each day Rs. 20 to	60	0	0
	If uncontested, each day	12	0	0
49.	The following costs may be allowed as between agent and client but are not to be allowed as party and party—			
	(1) Conference with Counsel before appeal if sanctioned or directed by client	12	0	0
	(2) Other conferences with Counsel not allowed as between party and party if sanctioned or directed by client	8	0	0
	(3) Expenses of Agent incurred with the sanction of client in collecting and taking down evidence and defraying expenses of witnesses other than those hereinbefore provided			Discretionary.
	(4) Every attendance by Agent's clerk on purdah woman, or client unable to attend Court or Agent's office to obtain signatures and verifications to pleadings or proceedings required to be verified and to get affidavits sworn or affirmed where within limits of Delhi town	8	0	0

	Rs.	A.	P.
Similar attendance by Agent in person when specially directed by client	20	0	0
(5) Every other attendance by Agent's clerk at any place other than Court House or Agent's office or house at request of client where attendance is within limits of Delhi town	8	0	0
Similar attendance by Agent in person where necessity is shown	20	0	0
(6) For every attendance by Agents in person beyond the limits of Delhi town under either of the last two preceding clauses, agents shall be allowed for every extra mile or portion of a mile beyond such limits additional fees to cover travelling expenses and loss of time per mile provided the total amount including fee for going and returning shall not exceed Rs. 80	2	0	0
For similar attendance by Agent's clerk additional fees shall be allowed at half the rates allowable to agents	..		
50. Making transcript or copying papers for the press where necessary for preparing paper book, including examination per folio	0	10	0
51. Printing paper book, actual cost at a reasonable rate to be allowed by the Taxing Officer	..		
52. Examining proofs per folio	0	5	0
53. Instructions for brief (including perusing of papers) whether on final disposal at first hearing settlement of issues, final trial or on appeals on references, or on motions			Discretionary.
54. Attendance by respondent's agent at the office of the appellant's agent to examine the printed copy of the transcript with the official copy for every hour or part of an hour	8	0	0

FEEs TO OFFICERS OF COURT.

1. Fees of interpreter for explaining at the house of a party or any place other than the Court House pleadings and other documents except affidavits or affirmations where not exceeding 20 folios	8	0	0
Where over 20 folios, for every 10 folios or part thereof	2	0	0
2. Fees of Registrar for taking bonds and of Commissioners for taking affidavits or affirmations at the house of a party or any place other than the Court house	..		
For the first affidavit, oath or affirmation or bond where within the limits of the Province of Delhi	16	0	0
Where beyond such limits	24	0	0
For every affidavit, oath or affirmation or bond taken at the same time and place after the first in the same suit, appeal or matter	8	0	0

Rs. A. P.

3. Fees of interpreter for explaining bonds, affidavits or petitions at the house of a party or any place other than the Court House Half the fees allowed to Registrar or Commissioner.

FIFTH SCHEDULE.

FORMS.

No. 1.

Form of Oath by Translator.

(ORDER II, RULE 4.)

In the Federal Court.

In the matter of _____, a translator.
I _____ solemnly affirm and say that I will translate correctly and accurately all documents given to me for translation.
solemnly affirmed before _____
the _____
19 .

Registrar.

No. 2.

Application for Production of Records.

(ORDER IV.)

In the Federal Court.

[Appellate Jurisdiction]
[Original Jurisdiction]

No. _____ of 19 .

A. B.

[Appellant]
[Plaintiffs]

vs.

C. D.

[Respondent]
[Defendants]

To

The Registrar, Federal Court.

SIR,

Please produce the records of the above suit before
no

[Signed]

Dated this day of 19 .

No. 3.

Certificate of Enrolment of Advocate.

(ORDER VII.)

No.

THIS IS TO CERTIFY that

has this day been admitted and enrolled [as a Senior Advocate] [as an
Advocate] [as an Agent] in the Federal Court.

Dated this day of 19 .

Registrar.

No. 4.

Undertaking by Agent.

(ORDER VII.)

I, the undersigned, do hereby declare that I will observe, submit to, perform, and abide by all and every the orders, rules, regulations, and practice of the Federal Court now in force, or hereafter from time to time to be made, and also to pay and discharge, from time to time, when the same shall be demanded, all fees charges, and sums of money due and payable in respect of any appeal, cause or other matter in and upon which I shall appear as such agent; and I undertake not to appear or plead before any High Court so long as my name remains upon the Roll of Agents in the Federal Court.

(Signed)

Registrar.

Dated this day of , 19 .

No. 5.

Form of Summons for an order in Chambers.

(ORDER VIII.)

In the Federal Court.

[Appellate Jurisdiction]

[Original Jurisdiction]

No. of 19 .

[Appellant]

A. B.
[Province of A. B.]

[Plaintiffs]

vs.[Province of C. D.]
C. D.

[Respondent]

[Defendants]

Let all parties concerned attend before
in Chambers in the Court House, [New Delhi,] on the day of
19 , at O'clock in the forenoon on the hearing of an applica-
tion on the part of [state on whose behalf the application is made and
the precise object of the application].

Dated this day of 19 .

This summons was taken out by A, Agent for the application.

To [insert the names of the Agents for the person to be served, e.g.,
C. D. Agent for the defendant].

To the plaintiff or defendant or appellant G. H. or as the case may be
Grounds:

[Here insert a list of the materials relied on, e.g., affidavit of
X. Y. Z., etc.].

No. 6.

Notice of Appeal from Registrar.

(ORDER VIII.)

In the Federal Court.

[Appellate Jurisdiction]

[Original Jurisdiction]

No. of 19 .

Take Notice that the above-named plaintiff [or as the case may be]
intends to appeal against the decision of the Registrar given on the
day of [ordering or refusing to order] that

And further take notice that you are required to attend before the
Judge in Chambers at the Court House, [New Delhi,] on the day
of in the forenoon, on the hearing of an application by
the said plaintiff [or as the case may be] that [here state the order sought.

to be obtained]. And further take notice that it is the intention of the said plaintiff [*or as the case may be*] to attend by an Advocate.*

(Signed, etc.)

To, etc.

*The last sentence to be omitted if an Advocate is not to attend.

No. 7.

Memorandum of Appearance in Person.

(ORDER XI.)

Appeal No. of 19 .

In the Federal Court.

Appellate Jurisdiction.

A. B.

Appellant.

vs.

C. D.

Respondent.

To

The Registrar.

Please enter appearance for me [*name of respondent*] the respondent above-named.

Dated this day of 19 .

Signature of respondent.

Address for Service.

No. 8.

Notice to Parties of the day fixed for hearing of Appeal.

(ORDER XII.)

Appeal No. of 19 .

In the Federal Court.

Appellate Jurisdiction.

A. B.

Appellant.

vs.

C. D.

Respondent.

To

(*Names of parties and their Agents.*)

Take notice that the above appeal is fixed for hearing on the day of and shall be taken up for hearing by the Court on that day or as soon thereafter as may be convenient to the Court.

Dated this day of , 19 .

Registrar.

No. 9.

Summons for Disposal of Suits.

(ORDER XIX.)

Suit No. of 19 .

*In the Federal Court.**Original Jurisdiction.*

Province of A.

B.

*Plaintiffs.**vs.*

Province of C.

D.

Defendants.

GEORGE VI, by the Grace of God, of Great Britain, Ireland and of the
British Dominions, beyond the seas, King, Emperor of India,

To

GREETING:

Whereas the above-named Plaintiffs have instituted a suit in this Court against you claiming you are hereby required to cause an appearance to be entered for you in the Registry of this Court within twenty-eight days from the service upon you of this summons, exclusive of the day of such service; and you are summoned to appear before this Court by an Advocate duly instructed by an agent of the court to answer the plaintiff's claim on the day the case is set down for hearing, upon which date you must be prepared to produce all your witnesses and all documents in your possession or power upon which you intend to rely in support of your case.

And you are hereby required to take notice that in default of your causing an appearance to be so entered, the suit will be liable to be heard and determined in your absence.

Witness , Chief Justice of India, the day of
in the year one thousand nine hundred and ,

Agent:

Address

Registrar.

No. 10.

Memorandum of Appearance though Agent.

(ORDER XIX.)

*In the Federal Court.**[Appellate Jurisdiction]**[Original Jurisdiction]*

No.

of 19 .

[A. B.]

Province of A. B.

[C. D.]

Province of C. D.

*[Appellant.]**Plaintiffs.**[Respondent.]**Defendants.*

To

The Registrar,

Please enter an appearance for the above-named defendant [*or the respondent, as the case may be*]

Dated this day of 19 .

(Signature of Agent)

Place of business of Agent.

No. 11.

Writ of Commission.

Suit No. of 19 .

In the Federal Court.

Original Jurisdiction.

Province of A. B.
Province of C. D.

Plaintiffs.

Defendants.

GEORGE VI, by the Grace of God, of Great Britain, Ireland, and of the British Dominions beyond the seas, King, Emperor of India.

To

The Commissioner appointed to examine the undermentioned witnesses on behalf of

GREETING:

Know ye, that we in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you full power and authority, to swear or affirm and diligently to examine *viva voce*.

as shall be produced before you as witness
on behalf of the said in a certain suit No. of

now pending in our Federal Court (wherein

) and we further command you that you do at certain days and places to be appointed by you for that purpose of which reasonable notice shall be given to all parties cause the said witness [es] to come before you and then and there examine and cross-examine such witness [es] either upon oath or solemn affirmation, which we hereby give you full power and authority to administer to such witness in the form firstly specified at the foot hereof, and that you do take such examination and reduce the same into writing on paper; and when you shall have so taken the same you are to send the same before the [returnable date as given in the order for the issue of this commission] to the Registrar of our said Federal Court closed up under your Seal together with such documents as shall be spoken to and marked exhibits and this writ.

And we further empower you to appoint, if necessary, a competent interpreter to interpret such of the proceedings under this commission as

you may deem necessary to have interpreted from or into the English language. And we further command you that the interpreter employed in interpreting the depositions of the said witness [es] to be examined by virtue of these presents shall, before he be permitted to act as such interpreter as aforesaid, take the oath or affirmation lastly specified at the foot hereof which we hereby give you full power and authority to administer to such interpreter. And we do lastly order that the parties to this suit do appear before you in person or by their agents or pleaders. Witness
 Chief Justice of India, the day of in the year one
 thousand nine hundred and
 Agent for
 Agent for

[Names of witnesses to be examined.]

Registrar.

NOTE 1.—The Commissioner shall not be bound to execute this commission unless such a sum as he thinks reasonable be deposited with him for the expenses of executing the same, and also of summoning the witnesses and defraying their travelling and other expenses.

NOTE 2.—After the deposition of any witness has been taken down, and before it is signed by him, it shall be distinctly read over, and, where necessary, translated to the witness in order that mistakes or omissions may be rectified or supplied. The deposition shall be signed by the witness and left with the Commissioner who shall subscribe his name and date of the examination.

Form of the oath or affirmation to be administered to the witness.

I swear in the presence of Almighty God [or solemnly affirm] that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

So help me God.

Form of the oath or affirmation to be administered to the interpreter.

I swear in the presence of Almighty God [or solemnly affirm] that I understand and speak the and English languages, and that I will well and truly and faithfully interpret, translate and explain to the witness to be produced before the Commissioner, all questions and answers; and all such matters as the Commissioner may require me to interpret and explain.

So help me God.

N.B.—The words "So help me God" are to be omitted when an affirmation is administered.

The execution of this commission appears by the schedule hereunto annexed.

Commissioner.

MISCELLANEOUS.

Where the memorandum of appeal was accompanied only by the copy of the judgment and not by the copy of the decree, and the copy of the decree was later on filed before the period of limitation had expired, the defect was excused.—*Lallu Ram v. Dy. Commissioner, Kheri*, 12 Luck. 472: 165 I.C. 578. Where the copies of judgment and decree accompanying the memorandum of appeal were not properly stamped till after the period of limitation had expired, the appeal was held to be time barred.—*Har Narain v. Jai Gopal*, 39 P.L.R. 502. It is necessary that a memorandum of appeal *shall* be accompanied by a copy of the decree appealed against. The provisions of Or. 41, r. 1, Civil Procedure Code, are imperative.—*Hakam Beg v. Rahim Shah*, A.I.R. 1927 Lah. 912; *Bali Ram v. Ghasi Ram*, 81 I.C. 1001; *Sundaram v. Muthuramlinga*, 44 M.L.J. 279: 72 I.C. 308; *Maung Po Saung v. Ma Mun*, 65 I.C. 68; *Naidar v. Bhartu*, 28 P.L.R. 272: 101 I.C. 776; *Mt. Saban v. Shahbal*, 10 Lah. 587: 30 P.L.R. 373: 115 I.C. 753 (F.B.); *Hayat v. Mahomed Hussain*, 11 Lah. L.T. 31. Where the appellant filed a copy of the final judgment but without a copy of the order which had been passed at a previous stage, it was held that the presentation of the appeal was not defective.—*Ram Narain v. Gwalior Light Railway*, 33 P.L.R. 100: 134 I.C. 300. It is not necessary to file with the memorandum of appeal, a copy of the order disposing of a preliminary issue in the case.—*Hashmi v. Pir Sant Das*, 10 Lah. L.T. 23. In an appeal from a mortgage decree the papers filed along with the memorandum of appeal were, besides the *vakalatnamah*, certified copies of the preliminary judgment and the final decree. No copy of preliminary decree had been filed and the memorandum purported to be of an appeal from the final judgment and decree. It

Copy of
Decree filed
later on

was held that, as it was not suggested that the final decree had not followed the directions contained in the preliminary decree, the appeal was not in order; that in any case it could not be regarded as an appeal from the preliminary decree which was not even referred to in the memorandum and that the appellant could not impugn the final decree on grounds appropriate to an appeal from the preliminary decree.—*Surendra Mohan v. Mohendra Noth*, 59 Cal. 781: 36 C.W.N. 420; A.I.R. 1932 Cal. 589. Or. 41, r. 1 of the Civil Procedure Code, in so far it requires the memorandum of appeal to be accompanied by a copy of the decree appealed from is satisfied if a copy of only that part of the decree is filed against which the grounds taken are all directed. In any case, the Court has power under section 151 to dispense with a copy of that part of the decree which is unnecessary for the purposes of the appeal.—*Annabati v. Parameswar*, 40 C.W.N. 1298.

New and
Additional
ground in
appeal.

An additional ground of appeal filed after the period of limitation had expired, of which the respondent has had sufficient notice, can be argued with the leave of the Court express or implied.—*Maung Ba v. Maung Tha Yin*, A.I.R. 1931 Rang. 314: 135 I.C. 328. A question relating to the validity of the lease which was not raised in the lower Court or set forth in the grounds of appeal was, however, allowed by the Court to be raised on appeal as it was a pure question of law and went into the root of the matter.—*Ramchandra v. Narasimha*, 33 Bom. L.R. 590: 133 I.C. 839. Where on the pleadings it was clear that the basic question between the parties was as to their relationship, the Court permitted the appellant to urge a new ground to the effect that the suit was not maintainable as the relationship between the parties was that of partnership.—*Minck v. Roshan Lal*, 32 P.L.R. 235: A.I.R. 1931 Lah. 390. When the first Court has neither put in issue a plea of the defendant, nor has given a finding thereon and the appellant has not mentioned it in the ground

of appeal, such plea cannot be raised in appeal.—*Nathu Mal v. Mul Chond*, 17 I.C. 232. Where the finding of the lower appellate Court against the factum of adoption was not questioned in the grounds of second appeal, it was held that the validity of the adoption could not be allowed to be urged.—*Rajambal v. Shanmuga*, 1922 M.W.N. 481: 70 I.C. 653.

Leave to re-open before the Judicial Committee a question which might be raised in the High Court but was not, is not wholly excluded, but such leave can be granted only in exceptional circumstances—whether to an appellant in the High Court who abandoned a ground of appeal of which he had given notice or to a respondent there who did not raise a point in his favour which was open to him without notice. In the Privy Council case of *Fanny Skinner v. The Bank of Upper India* (39 C.W.N. 834), there was at first only one substantial defence put forward by Fanny Skinner. It was that she was a *pardanasheen* lady; that the mortgage had been procured from her by her brother, whom she had entrusted with the power of attorney, that he had by means thereof obtained in her name from the Bank an advance of 15,000 rupees; that no part of that advance was ever received by her; that in point of fact she had not desired to go into the transaction at all, and that there was insufficient compliance with the formalities and conditions requisite before a mortgage executed by a *pardanasheen* lady can be enforced against her. That was, in the first instance, the only substantial defence put forward to the suit. Subsequently, she was allowed to put forward a further defence, to the effect that the plaintiff Bank was not entitled to sue by reason of the fact that there had been in 1917 an arrangement come to between the Bank, by that time in liquidation, and its creditors by virtue of which the whole of the assets of the Bank had been transferred to a purchasing company, the Trust of India, Limited; that all interest in this mortgage debt had passed to the Trust, so that the Bank had

no longer any right to sue in respect of it. In the appeal to the High Court the argument was directed exclusively to the issue whether the Bank, through its liquidation, had any right to sue. No other question was raised before the High Court. In the Privy Council the appellants asked leave to set up again their abandoned defence of substance. Their Lordships of the Judicial Committee did not grant such leave in the case.

In the case of *Florrie Edridge v. Rustomji Dhanjibhoy Sethna* (38 C.W.N. 145 P.C.), the point of *waiver* was sought to be urged before their Lordships of the Judicial Committee, but no *waiver* being pleaded by the respondent and no issue being directed on *waiver*, their Lordships refused to deal with the issue. In the Privy Council case of *The Baraboni Coal Concern Ltd. v. Deba Prasanna Mukherjee* (38 C.W.N. 481), Sir George Lowndes observed: "The Company appealed to the High Court against the decree of the Subordinate Judge, formulating no less than thirty-five grounds of objection, but the only contention that appears to have been urged on their behalf at the hearing of their appeal was that the sale of the mortgaged property should have been made specifically subject to their leasehold interest. This was conceded at once by Counsel for the first respondent, and their Lordships have little doubt that if this had been the only objection taken to the decree, the slip could have been put right without resort to the appellate Court. The real grievance of the Company seems to have been the finding of the Subordinate Judge as to the non-payment of the Rs. 31,500, but this, though occupying a prominent place in the Company's thirty-five grounds of appeal, was not even argued in the High Court..... Their Lordships offer no opinion upon these grounds, which have not been argued before them,....."

Where an objection is not taken in the written statement and the matter is not discussed in the trial

Court and is not mentioned in the grounds of appeal, the appellate Court should not go into the question at all.—*Badoroddi v. Ajisuddin*, 57 Cal. 10: 33 C.W.N. 559: A.I.R. 1929 Cal. 651.

A memorandum of appeal which has not been registered is not to be regarded as an appeal. As long as there are defects in it, all that the Court can do under Or. 41, r. 3 is to return it and give the party a chance of putting it again in a complete form; and any time that it allows for resrepresentaiotn is only by way of concession. A continuance or extension of the concession cannot be demanded as a matter of right at any rate after the expiry of the nominal period of limitation within which the appeal can be presented.—*In re Venkatanarasinha*, 144 I.C. 608: A.I.R. 1933 Mad. 358. An order rejecting a memorandum of appeal for deficient court-fee is not a decree or final order and does not preclude the appellant from presenting a fresh memorandum on proper court-fee.—*Inanadasundari v. Madhabchandra*, 59 Cal. 388: A.I.R. 1932 Cal. 482: 138 I.C. 643.

Memo. of appeal not registered not regarded as appeal.

Order rejecting memo. of appeal for deficient court-fee is not a decree.

When an appeal is preferred from a decree, it is the appellate Court alone that is seized of the matter, and an application for a stay of execution should be made to that appellate Court. So long as an appeal is not preferred, the application should be made to the Court which passed the decree. Unless the decree is one from which an appeal lies the stay petition cannot be entertained. The case of *Bhagwat v. Sheo Golam* (31 Cal. 1081) has laid down that, though the appellate Court may under Or. 41, r. 5 stay proceedings in execution when an appeal is preferred from a decree, it has no power to stay execution of a decree when an appeal is preferred from an order appealable under section 104 of the Civil Procedure Code. The above case was decided before the Civil Procedure Code of 1908 in which th new section 151 was inserted. It seems that under section 151 of the present Civil Procedure Code the

appellate Court can stay proceedings in execution even where an appeal is preferred from such order.

**Stay of
execution.**

In a summary suit on a promissory note, the defendant was granted leave to defend on condition of his furnishing security for the amount claimed within a certain time. That was not complied with, and a decree was passed against him for the amount. The defendant appealed from the order of conditional grant of leave to defend, but did not appeal against the decree in the suit, and prayed for stay of execution. It was held that the appellate Court could entertain an application for stay under Or. 41, r. 5, even though the decree had not been appealed from.—*Sundaram Chettiar v. Valli Ammal*, 58 Mad. 116.

No order for stay of execution should be made during the pendency of an appeal unless the Court is satisfied that substantial loss may result to the appellant applicant. Where an appeal was filed from a decree for possession of land and for mesne profits and the land in dispute was under a permanent lease at a uniform rent and the respondents who owned considerable immovable property were prepared to give adequate security for restitution in case the decree in their favour was reversed on appeal, it was held that the applicant had no apprehension or likelihood of any substantial and irreparable loss if execution proceedings were not stayed.—*Chajju Mal v. Multan Singh*, 35 P.L.R. 727: A.I.R. 1935 Lah. 140. It would not be enough merely to repeat the words of the saattute and state that substantial loss would result if the stay is not granted; the kind of loss must be specified and details must be given so that the Court may determine if substantial loss may result in the absence of an order for the stay prayed for.—*Anandi Prasad v. Govinda*, 150 I.C. 59.

What is the effect of uncommunicated order staying execution has been discussed by Mulla in his famous commentry on the Code of Civil Procedure as follows:—"It has been held by the High Court

of Calcutta, that where an order is made by an appellate Court staying execution of a decree, but before the order is communicated to the Court staying execution of a decree, the property of the judgment-debtor is sold in execution, the sale is invalid and cannot stand, the reason given being that when an unconditional order for stay of execution is made, the order becomes operative the moment it is made and suspends the power of the lower Court to continue the proceedings in execution. On the other hand, it has been held by the Madras High Court that such sale is valid, the reason given being that the Court of first instance still retains jurisdiction to execute its decree notwithstanding its appeal from it, and that the power to execute the decree can only be taken away by some communication to it of the order of the appellate Court. The latter view, it is submitted, is correct."—*Hukum Chand v. Kamalanand*, 33 Cal. 927; *Sati Nath v. Ratanmani*, 15 C.L.J. 335; *Muthu Kumaraswami v. Kuppusami*, 33 Mad. 74; *Venkatachalapati v. Kameswaramma*, 41 Mad. 151.

Effect of uncommunicated order staying execution.

A person who has stood as surety for costs and against whom a decree for costs has been consequently made is a judgment-debtor within the meaning of sec. 2 (10) of the Civil Procedure Code and is entitled to apply for stay of the execution of the decree pending an appeal therefrom.—*Shivasappa v. Marigowda*, 58 Bom. 485.

No appeal is competent from an order passed under sec. 151, Civil Procedure Code—*Kashmiri Lal v. Chuni Lal*, 155 I.C. 503. If a judge having no jurisdiction to entertain the appeal entertains one, his judgment becomes *coram non judice* and must be set aside.—*Mul Raj v. Bura Mal*, 12 Lah. 602: 134 I.C. 292. An order passed on an application under sec. 151, Civil Procedure Code, invoking the inherent power of the Court to correct its own error is not appealable.—*Sheolalsa v. Hira*, 158 I.C. 998. The Court cannot

No appeal from order passed under S. 151, C. P. C.

Refund of
court-fees
paid in
excess.

use its inherent powers to extend the scope of a provision which places limitation on it. An appellate Court has, therefore, no jurisdiction to implead a person against whom an appeal has abated as such a person is not "interested in the result of the appeal" within the meaning of Or. 41, r. 20.—*Krishnasami v. Sankarappa*, 41 L.W. 111: 156 I.C. 110. An appellate Court can consider the merits of an interlocutory order and remand the case for re-decision if irreparable injury is done to the party contrary to law—*Mehtab Singh v. Secy of State*, A.I.R. 1933 Lah. 157. The High Court can, under its inherent powers, assist an appellant who has paid through mistake excess court-fee on his memorandum of appeal.—*Thammayya Naidu v. Venkataramanamma*, 55 Mad. 641; *Central Bank of India v. Thakur Das*, 34 P.L.R. 270: 141 I.C. 400; *Galstaun v. Raja Janki Nath*, 38 C.W.N. 185: 152 I.C. 215; *Vijayalakshmi v. Srinivasa*, 57 Mad. 542; *Mt. Gendo v. Radhe Mohan*, 33 P.L.R. 54: 136 I.C. 559.

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the Civil Procedure Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fee has not been paid, the Court may, in its discretion, at any stage, allow the person by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee has been paid in the first instance. When a memorandum of appeal is filed, it is open to the Court to reject it at once as a document insufficiently stamped and if it does not at once reject it, it is open to it to allow the deficit to be made good, whether the document had been accepted by inadvertence, or whether time had been expressly allowed under sec. 149 of the Civil Procedure Code; but in

either event when it allows the deficit to be made good within the period during which the question of the admission of the appeal is before it, the effect of the acceptance of the deficit court-fee is that the memorandum of appeal must be treated as if it had been sufficiently stamped on the day of presentation.—*Singasan v. Gaya*, 16 P.L.T. 385: 156 I.C. 405.

Where the appellant filed his appeal within the time limited by law without any stamp and at the same time put in an application for permission to appeal in *forma pauperis* and tendered the requisite court-fees after the expiry of the period of limitation on rejection of his application, it was held that the appeal filed without any court-fee cannot be deemed a nullity and that section 149 of the Civil Procedure Code gives the Court a discretion to allow the payment of court-fees at any stage and that even if sec. 149 had not this effect, it would be a case for the application of sec. 5 of the Limitation Act.—*Shco Shankar v. Ram Dei*, 10 Luck. 569: 154 I.C. 135.

Section 148 of the Civil Procedure Code deals with an act prescribed or allowed by the Code of Civil Procedure but not with an act for which a statutory provision has been made. For instance, the deposit of the decretal dues required by sec. 174, cl. (5) of the Bengal Tenancy Act must be made before an appeal under that section is registered and the Court has no jurisdiction to extend the time provided by the statute.—*Bidhubala v. Kumud Nath*, 41 C.W.N. 1299: 67 C.L.J. 211; *Sudhir Chandra v. Nazir Mamud*, 43 C.W.N. 106.

Sec. 148,
C. P. Code—
Powers to
extend time,

An order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX, Civil Procedure Code, is an appealable order. An appeal lies from an order refusing, as well as from one granting, a temporary injunction. An appeal is also permissible from an order purporting to be made under this rule, though not warranted by it.—*Abdul v. Ganapathi*, 23 Mad. 517. No appeal lies to the High Court from an order made by the lower

Order grant-
ing or re-
fusing in-
junction is
appealable,

appellate Court under rule 1 of Order XXXIX, Civil Procedure Code. But the High Court of Calcutta in the exercise of powers conferred upon High Courts by section 15 of the Charter Act, made an order granting an injunction.—*Israil v. Shamser*, 41 Cal. 436; *Hemanta v. Baranagore*, 19 C.W.N. 442. In the case of *Durga Das Das v. Nalin Chandra Nandan*, 61 Cal. 814: 38 C.W.N. 771, there was an appeal to the High Court from a judgment refusing to grant two applications by the plaintiff, for attachment of property before judgment under Or. XXXVIII, rule 5 and for a temporary injunction under Order XXXIX, rule 1 of the Civil Procedure Code. Lord-Williams, J., observed in the judgment of the case as follows:—“The question of appeal raises the further question whether the procedure under the Code and the machinery of the High Court are generally appropriate to appeals in such matters as these. It is true that an appeal is given, but in most, if not in every such case, it must be fruitless and should not therefore be admitted except in very exceptional circumstances.” An order refusing to discharge an injunction issued under Order XXXIX, rule 2 is appealable—*N. W. Ry. Administration v. N. W. Ry. Union, Lahore*, 14 Lah. 330: 148 I.C. 49. An appeal lies from an order of a Judge of the Original Side of the High Court, refusing to grant an interim injunction.—*Shamsuddin v. Charu Chandra*, 60 C.L.J. 1: 152 I.C. 563.

Signing of
Judgment—
effect of
non-com-
pliance.

The question whether non-compliance with Or. 41, rule 31 of the Civil Procedure Code, laying down the provisions as to the signing of a judgment, can affect the rights of the parties and renders the judgment a nullity, was discussed in the Privy Council case of *Gokal Chand v. Nand Ram Das*, 43 C.W.N. 87, where Lord Wright observed: “The rule does not say that if its requirements are not complied with the judgment shall be a nullity. So startling a result would need clear and precise words. Indeed the rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what

is reasonable. The rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the judgment was. It is a rule which Judges are required to comply with for that object. No doubt in practice Judges do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect. The case of a Judge who has gone on leave before signing the judgment may call for more comment, but even so the convenience of the Court and the interest of litigants must prevail. The defect is merely an irregularity."

Ordinarily, when a person submits to a decree it is no part of the Court's duty to interfere and give that person gratuitously a relief which he has not prayed for. The general principle is that where there is no appeal or application for revision, the decree will stand. This principle should be adhered to unless it is found that such adherence will hamper the Court in doing complete justice. In order to meet those cases, discretionary power has been given to the Court by Or. 41, rules 4 and 33 of the Civil Procedure Code. But these discretionary powers should be cautiously used and the exercise of these powers, when it is not necessary, would constitute an error of law and procedure justifying an interference by the High Court.—*Fazal Rahaman v. Abdul Rashid*, 43 C.W.N. 15.

Certain persons, claiming to be some of the co-sharers of a *touzi* brought a suit against a third person for declaration of their title and confirmation of possession and they impleaded the remaining co-sharers as *pro forma* defendants. On the suit being decreed, the principal defendant appealed, impleading the plaintiffs and all the *pro forma* defendants as respondents. One of the latter died and his heirs not being substituted within the period of limitation the

Court held that the appeal had abated not only against the deceased respondent but *in toto*. Thereupon the principal defendant preferred a second appeal, again impleading all the *pro forma* respondents but after some time had the appeals dismissed as against them on the representation that against them she did not wish to proceed with the appeal. It was held that the order of the first appellate Court amounted to a decree and was appealable and that the second appeal had not become incompetent by reason of the abandonment of the *pro forma* respondents against whom no relief was claimed in the suit and with whom no issue had been joined.—*Sabitribai v. Jugal Kishore*, 43 C.W.N. 41.

**Appeal to
Privy
Council.**

No appeal lies to the Privy Council from a decree professedly made with the consent of the parties, and which did not, except so far as authorized by consent, embody any judicial finding by the Court itself—*Moulvi Zahir-ul-Said v. Lachmi Narayan*, 56 C.L.J. 568 (P.C.).

Practice.

Where all the facts stated in a petition are supported by the certified copy of the order-sheet which is attached to the petition, no affidavit in support of such facts is necessary.—*Raj Ballav v. Rajendra Narayan*, 40 C.W.N. 1408. It is compulsory to include depositions in the Paper-book of a first appeal and none of them can be omitted by the appellant except with the consent of the opposite party or under a special order obtained from the Court. If documents referred to in the judgment are not printed in the Paper-book by the appellant, the omission involves the risk of his not being allowed to argue that the conclusion arrived at on those documents by the Court below is not right and the respondent is entitled to ask the Court to uphold that conclusion.—*Santosh Kumar v. Giri Bala*, 40 C.W.N. 42. But those documents may be allowed to be excluded on condition that the appellant will be precluded from challenging any finding dependent on those papers.—*Prakash Chandra v. Subodh Chandra*, 40 C.W.N. 380.

An application to a Judge dismissing a suit under Chapter X, r. 36 of the Original Side Rules of the Calcutta High Court, to set aside the order of dismissal is not an application for review—not being based on new facts discovered since the last hearing. It is merely an application to reconsider a matter which it is in the power of the Judge to do before an order is perfected by completion. The order of refusing to set aside the order of dismissal under Ch. X, r. 36, is the final order dismissing the suit and is appealable.—*Ram Jiban v. Akhil Chandra*, 39 C.W.N. 1196.

A Court of Revision has no power to allow compensation in respect of the proceedings in that Court, as sec. 35A of the Code of Civil Procedure seems to be confined to the original hearing of suits or proceedings. Where upon the dismissal of a suit, no compensation was given to the defendant under sec. 26 of the Presidency Small Cause Courts Act, 1882, the High Court should not, when the case comes up before it in revision at the instance of the plaintiff under sec. 115, Civil Procedure Code, allow compensation to the defendant opposite party, although in the opinion of the High Court it was a proper case for substantial compensation.—*M. S. Cohen v. Iqbal Singh*, 42 C.W.N. 658. When the High Court, in its appellate jurisdiction, has directed security to be furnished by a party to the satisfaction of a lower lower Court or of the Registrar, the decision of such authority on the sufficiency of the security cannot be questioned by means of an appeal or an application and the High Court cannot go behind his finding. The High Court, however, can review its order on proper grounds.—*Bibhabati v. Ramendra*, 42 C.W.N. 188.

Court of revision if can allow compensation.

A limited company cannot sue or appeal as a pauper.—*Bharat Abhudoy Cotton Mills, Ltd. v. Kameswar*, 42 C.W.N. 1164.

In *Surapati Roy's* case (50 I.A. 155: 28 C.W.N. 517) two rent suits against the decisions in which the appeal was preferred were valued at a sum consider-

Valuation
for purposes
of Privy
Council
appeal.

ably less than Rs. 10,000. It was held by their Lordships that the liability being of a recurring nature, and the property above that value, the High Court has rightly certified that the value of the subject-matter was over Rs. 10,000 as required by sec. 110 of the Civil Procedure Code. In the case of *Ram Lal Dutta v. Dharendra Nath Roy* (43 C.W.N. 239), the principle laid down in *Surapati Roy's* case (50 I.A. 155: 28 C.W.N. 517) was held to be not applicable as the decision in the case did not go to the root of the contractual relation between the parties and it did not determine the rights and liabilities of the parties on the basis of the lease for all time to come, in which case the real value of the subject-matter of the suit could be taken to be beyond its apparent value.

Time for
filing cross-
objection.

An application for extension of time for filing a cross-objection should be dealt with when it is made and should not be left over for determination till the hearing of the appeal by an order allowing the application, subject to any just exception being taken at the time of the hearing.—*Harey Harey v. Hari Chaitanya*, 40 C.W.N. 1237.

Powers of
Appellate
Court.

In a suit by the plaintiffs for arrears of annuity granted by the predecessor of the defendant as charged upon certain properties it was held that no valid charge had been proved but the plaintiffs' claim was decreed as being realisable from the assets of the grantor in the hands of the defendant. The defendant appealed but no appeal was preferred by the plaintiffs regarding that part of the decree which had disallowed their claim for the charge. The appellate Court came to the conclusion that the defendant was not personally liable but that the plaintiffs could enforce the charge they had set up and decreed the suit accordingly. It was held that the appellate Court was entitled to do so under Or. 41, r. 33 of the Civil Procedure Code.—*Radhika Mohan v. Sudhir Chandra*, 40 C.W.N. 1397. See also, *Gangadhar v. Banabasi*, 22 C.L.J. 390; *Abjal Majhi v. Intu Bepari*, 22 C.L.J. 394; *Akimannessa v. Bepin*

Behary, 22 C.L.J. 397; *Dinanath v. Sudhanyamoni*, 39 C.W.N. 420.

The words "in a case open to appeal" in Or. 43, r. 1 (d) of the Civil Procedure Code have no reference to the appeal against the decree actually passed. A case is not open to appeal within the meaning of the sub-clause only when no appeal would lie in any circumstances from a decree that could be passed. Accordingly, an appeal lies from an order under Or. 9, r. 13 rejecting an application for setting aside an *ex parte* decree in a simple rent suit valued at Rs. 50 or less, although from the decree actually passed no appeal might lie because of the trying Munsif having final jurisdiction.—*Mahendra v. Basiruddin*, 40 C.W.N. 992.

Meaning of
—"in a case
open to
appeal."

Where the evidence is such that two different views may honestly be taken and the trial Judge took a view opposite to that which commends itself to the appellate Court, it is not proper for the appellate Court to cast imputations on the honesty of the trial Court and do so in language which may prevent that Court from forming and expressing an independent view of the result of the evidence before it.—*Chaudhri Mahbub Singh v. Abdul Aziz*, 43 C.W.N. 253 (P.C.).

When an appeal is presented on the last day of limitation without the necessary deposit and the deposit is made before the hearing under Or. 41, r. 11 within a certain period allowed by the Court, the appeal is not competent and the decision given in such appeal, reversing the decision of the trial Court, must be set aside.—*Sudhir Chandra v. Nazir Mamud*, 43 C.W.N. 276.

Without
statutory
deposit
appeal is
incompetent.

Where the executing Court has declined to strike off the execution case on the application of the decree-holder in the view that a third party had acquired an interest in the property, the correctness of the Court's view as to the accrual of the third party's interest is not a fit subject of review under section 115, Civil Procedure.—*Sital Chandra v. Romesh Chandra*, 42 C.W.N. 979.

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